



GOVERNMENT OF THE  
CENTRAL PROVINCES AND BERAR



THE  
CENTRAL PROVINCES & BERAR  
LEGAL DEPARTMENT  
MANUAL

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(FOURTH EDITION : 1941)

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## PREFACE

This edition of the Law Department Manual, now styled the Legal Department Manual, makes very few changes of substance. It is intended to amplify and clarify the rules contained in the third edition. The chief modifications are indicated below :—

- (a) Rules now require that references should be made to the Legal Department instead of to the Legal Remembrancer except under Chapter IV.
- (b) Rules about the employment and emoluments of law officers have been amplified and clarified.
- (c) Rules about appeals by Government against acquittals have been clarified particularly in regard to the facilities to be given to the accused.
- (d) Rules about the procedure in surcharge cases have been slightly modified.
- (e) Rules about the procedure in suits relating to public matters have been amplified.

	A. N. SHAH,
NAGPUR :	<i>Secy. to Govt., C. P. &amp; Berar,</i>
<i>The 15th November 1941.</i>	<i>Legal Department.</i>



This Manual is issued under the authority of the Provincial Government.

It is sufficient authority for any order contained therein which is not required by law to be notified in the *Central Provinces and Berar Gazette*.

By order of the Governor,  
Central Provinces and Berar,  
A. N. SHAH,  
Secy. to Govt., C. P. & Berar,  
Legal Department.

NAGPUR :  
The 15th November 1941.



# TABLE OF CONTENTS

*Page*

## PRELIMINARY

*Rule*

1	Definitions	..	1
2	Manner of making references to Government	..	1

## PART I.—LAW OFFICERS

### CHAPTER I.—APPOINTMENT, POWERS AND DUTIES OF LAW OFFICERS

3	Law Officers	..	1
---	--------------	----	---

#### *The Advocate-General.*

4	Participation in politics	..	1
5	Leave of absence and pension	..	2
6	Duties	..	2
7	Disabilities	..	4
8	Withdrawal from prosecution	..	4

#### *The Legal Remembrancer.*

9	Offices held by Legal Remembrancer, his powers and duties.		5
---	--	--	---

#### *The Assistant Legal Remembrancer.*

10	Offices held by Assistant Legal Remembrancer and his duties.		5
----	--	--	---

#### *Public Prosecutors and Assistant Public Prosecutors.*

11	Appointment	..	6
12	Participation in politics	..	6
13	Probation and confirmation	..	6
14	Term of office	..	6
15	Termination of term	..	6
16	Leave of absence and pension	..	6
17	Status and powers	..	7
18	Withdrawal from prosecution	..	7



<i>Rule</i>		<i>Page</i>
19	Duties in criminal Courts ..	7
20	Duties in civil Courts ..	8
21	Allotment of cases to Assistant Public Prosecutors.	8
22	Duties in cases under Local Fund Audit Act ..	8
23	Advisory and other duties ..	8
24	Disabilities ..	8
25	Relations with District Magistrates and Police..	9
26	Government's power to engage private pleaders instead of Public Prosecutors.	9
CHAPTER II.—EMOLUMENTS OF LAW OFFICERS		
27	Emoluments of Advocate-General ..	9
28	His travelling allowance ..	10
29	Public Prosecutor's remuneration ..	10
30	Fees in criminal cases ..	10
31	Fees in civil cases ..	10
32	Special fees ..	11
33	Payment of fee when engagement is subsequently cancelled.	11
34	Travelling allowance ..	11
35	Fees for work outside jurisdiction ..	12
36	Necessity of Government's sanction for excess fees.	12
37	Fixation of fees in doubtful and special cases ..	12
37-A	Assistant Public Prosecutor's remuneration ..	12
38	Establishment and hot weather arrangement ..	12
CHAPTER III.—EMPLOYMENT OF PRIVATE LEGAL PRACTITIONERS AND THEIR EMOLUMENTS		
39	Employment of counsel in criminal cases wherein Public Prosecutor is bound to appear but is not available.	12
40	Employment of counsel in criminal cases wherein Public Prosecutor is not bound to appear.	13
41	Counsel to be local resident ..	13
42	Private arrangement by Public Prosecutor in certain cases.	13
43	Employment of counsel in civil cases in absence of Public Prosecutor.	13

# TABLE OF CONTENTS

iii

<i>Rule</i>		<i>Page</i>
44	Employment of counsel in absence of Advocate-General.	13
45	Employment of counsel for special reasons in civil or criminal cases.	14
46	Fees of counsel in criminal cases ..	14
47	Fees of counsel in civil cases ..	15
48	Necessity of Government's sanction for excess fees.	15
49	Travelling allowance of counsel ..	15
50	Fees of counsel engaged to defend pauper accused	15
51	Payment of fee when engagement is subsequently cancelled.	16
52	Fixation of fees in doubtful and special cases ..	16

## PART II.—PROCEDURE IN ADVISORY WORK

### CHAPTER IV.—REFERENCES TO LEGAL REMEMBRANCER

53	Scope of the chapter ..	16
54	Matters on which Legal Remembrancer's advice may be sought.	16
55	Matters on which Legal Remembrancer's advice may not be sought.	16
56	Who may make references ..	17
57	Method of correspondence ..	17
58	Case to be clearly put ..	17
59	References concerning drafting of deeds ..	17
60	Examination of title in house building advance cases.	17
61	Personal discussion ..	18
62	Demi-official references ..	18
63	Legal Remembrancer to advise certain departments of Central Government.	18

### CHAPTER V.—REFERENCES TO ADVOCATE-GENERAL

64	Direct references to Advocate-General ..	18
65	Advocate-General's opinion to be taken in cases in which he may have to appear in Court.	19

# PART III.—CONTROL OF GOVERNMENT LITIGATION IN CRIMINAL COURTS

## CHAPTER VI.—PROCEDURE IN CASES BEFORE SUBORDINATE COURTS

### *A.—In Magistrates' Courts.*

66	Powers of police prosecuting staff ..	19
	Engagement of Public Prosecutor in Magistrate's Courts.	19
67	Notice of appeal in Magistrate's Court ..	19
68	Responsibility of Prosecuting Inspector ..	19
69	Representation of Crown in appeals before Magistrates.	19

### *B.—In Courts of Session.*

70	Public Prosecutor to appear in all sessions trials.	20
71	Notice of appeal in Court of Session ..	20
72	Appearance of Public Prosecutor in appeals, etc.	20

### *C.—Supply of copies and other facilities to Public Prosecutors.*

73	Supply of copies in sessions cases ..	20
74	Copies of original case diaries in sessions cases..	20
75	Facility for inspection of records in sessions cases	20
76	Supply of copies in other cases before a Court of Session.	21

## CHAPTER VII.—PROCEDURE IN CASES BEFORE THE HIGH COURT AND OTHER AUTHORITIES

### *A.—Appeals by convicted persons.*

77	Notice to District Magistrate and Advocate-General from High Court.	21
78	Requisition by District Magistrate in important cases.	21
79	Requisition by District Magistrate in section 30 cases.	22

<i>Rule</i>	<i>Page</i>
<i>B.—Appeals by Government against acquittals.</i>	
80 Responsibility of District Magistrates ..	22
81 Procedure of District Magistrate ..	22
82 Special reference by Inspector-General of Police	22
83 References to be prompt ..	22
84 Facilities to accused ..	22
85. Applications to Deputy Commissioner from private persons.	23
<i>C.—Revision cases.</i>	
86 Notice of revision cases in High Court ..	24
87 Procedure on issue of rule to show cause ..	24
88 Supply of copies to Advocate-General ..	24
89 Procedure on reports under section 438, Criminal Procedure Code.	25
90 Procedure in other cases of revision ..	25
<i>D.—Combination of appeals and applications for revision.</i>	
91 Procedure relating to appeals by accused in cases involving capital charge.	25
<i>E.—Applications to High Court for transfer of cases.</i>	
92 Procedure in cases of transfer ..	26
<i>F.—Miscellaneous provisions regarding criminal cases.</i>	
93 Appearance of Advocate-General at the instance of High Court.	26
94 Assistance to Advocate-General ..	27
<i>G.—Cases before Financial Commissioner and Chief Revenue Authority.</i>	
95 Procedure in cases before Financial Commissioner or Chief Revenue Authority.	27

<i>Rule</i>		<i>Page</i>
CHAPTER VIII.—PROSECUTION OF CRIMINAL CASES INSTITUTED AT THE INSTANCE OF DEPARTMENTAL OFFICERS		
96	Scope of the chapter ..	27
97	Expediency of consulting District Magistrate in all cases.	27
98	Report to police in cognizable cases ..	28
99	District Magistrate to be consulted in non-cognizable cases.	28
100	Complaint in cases not requiring sanction of Government.	28
101	Procedure in cases requiring sanction of Government.	28
102	Appointment of prosecutor in simple cases ..	28
103	Engagement of Public Prosecutor in complicated cases.	29
104	District Magistrate to assist railway authorities..	29
105	Intimation to railway or departmental officers of the filing of appeal.	29
106	Procedure in cases involving loss mentioned in rule 56-II (b) of Financial Rules.	29
CHAPTER IX.—ASSISTANCE TO GOVERNMENT SERVANTS IN CRIMINAL CASES INSTITUTED BY OR AGAINST THEM.		
107	Scope of the chapter ..	31
108	Assistance to Government servants in cases of defamation.	31
109	Defence of Government servants ..	31
110	Submission of report to head of department ..	31
	Procedure when section 197, Criminal Procedure Code, applies.	32
111	Engagement of counsel ..	32
112	Procedure when decision is in favour of Government servant.	32
	Procedure when decision is against Government servant.	32
113	Duty of counsel when proceedings are likely to prolong.	32

<i>Rule</i>		<i>Page</i>
CHAPTER X.—DEFENCE OF PAUPER ACCUSED		
114	Assistance to pauper accused ..	33
115	Responsibility for decision to give assistance ..	33
116	Selection of practitioner ..	34
117	Supply of copies ..	34
PART IV.—CONTROL OF GOVERNMENT LITIGATION IN CIVIL COURTS		
CHAPTER XI.—SUITS AGAINST GOVERNMENT		
<i>A.—Proceedings prior to institution of suits.</i>		
118	Legal advice before receipt of notice ..	35
119	Previous notice of suit against Government ..	35
120	Procedure when suit filed without due notice ..	35
121	Procedure when notice relates to suit against Central Government or Secretary of State.	36
122	Notice to be endorsed and copy sent to Legal Department.	36
123	Transfer of notices to executive officers concerned	36
124	Conduct of negotiations ..	36
125	Reference to arbitration ..	37
126	Reports to be made promptly ..	37
127	Contents of reports ..	37
128	Orders of Government on reports	38
<i>B.—Proceedings subsequent to institution of suits.</i>		
129	Deputy Commissioner appointed to receive processes.	38
130	Transfer of summons to officer in charge ..	38
131	Officer in charge to be recognized agent of Government.	38
132	Engagement of Public Prosecutor ..	38
133	Report after receipt of summons ..	39
134	Orders of Government on report ..	39
135	Responsibility of officer in charge for production of evidence.	39
136	Further instructions from Legal Remembrancer..	39
137	Report of result of suits ..	39
<i>C.—Applications under section 14 (1) of the Local Fund Audit Act, 1933 (IX of 1933).</i>		
138	Procedure in surcharge cases ..	40

<i>Rule</i>		<i>Page</i>
CHAPTER XII.—SUITS INSTITUTED BY GOVERNMENT		
139	Sanction to institution of suit by Government ..	41
140	Desirability of amicable settlement ..	41
141	Preliminary departmental inquiry ..	41
142	Report when suit recommended ..	41
143	Contents of report ..	41
144	Orders of Government on the report ..	42
145	Engagement of Public Prosecutor ..	42
146	Submission of draft plaint ..	42
147	Officer in charge to sign and verify plaint ..	42
148	Further procedure ..	42

## CHAPTER XIII

*A.—Appeals and revisions.*

149	Procedure when decision adverse ..	43
150	Report when appeal recommended ..	43
151	Orders of Government on the report ..	43
152	Departmental assistance to counsel conducting an appeal.	43
153	Appals against decisions in favour of Government.	43
154	Second appeals and revisions ..	44
155	Responsibility of Public Prosecutors for timely action in certain cases.	44

*B.—Appeals to His Majesty in Council.*

156	Application for permission to appeal how to be dealt with.	44
157	Selection of exhibits for transcript of record ..	44
158	Preliminary instructions to the Legal Adviser to the Secretary of State.	44
159	Preparation of transcript of record ..	44
160	Preparation of statement of cases ..	44
161	Statement to be printed ..	45
162	Date of transmission of record to be communicated to Government.	45

<i>Rule</i>	<i>Page</i>
<i>C.—Appeals to the Federal Court.</i>	
163 Advocate-General's duty in respect of certificate under section 205 (1) of the Government of India Act, 1935.	45
164 Procedure to be followed regarding an appeal to the Federal Court.	45
CHAPTER XIV.—EXECUTION OF DECREES AND RECOVERY OF COSTS	
165 Satisfaction of decrees against Government ..	46
166 Execution of decrees in favour of Government ..	46
167 Deputy Commissioner to assist officer in charge..	46
168 Stay of execution on appeal ..	46
169 Payment out of Court ..	46
170 Responsibility of Legal Department ..	46
171 Recovery of court-fees in pauper suits ..	47
CHAPTER XV.—SUITS BY OR AGAINST GOVERNMENT SERVANTS	
172 Suits by Government servants ..	47
173 Suits against Government servants ..	47
174 Notice in suit against Government servants.	48
Dismissal of suits brought without notice.	48
175 Separate rules for police officers ..	48
CHAPTER XVI.—SUITS RELATING TO PUBLIC MATTERS	
176 Officers who may institute or consent to the institution of suits relating to public matters.	48
177 Procedure to be followed when applications are addressed to the Advocate-General.	48
178 Procedure to be followed when applications are addressed to the Deputy Commissioners.	48
179 Fresh applications relating to matters disposed of not to be entertained.	49
180 Procedure when suit proposed to be instituted by Government agency.	49
APPENDIX I.—Limitation for applications for revision under the Criminal Procedure Code.	50
APPENDIX II.—Procedure regarding payment of salary, fees and allowances to law officers.	50





# THE CENTRAL PROVINCES AND BERAR LEGAL DEPARTMENT MANUAL

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## PRELIMINARY

1. **Definitions.**—In these rules, unless there is anything repugnant in the subject or context—

- (i) “Government” or “Provincial Government” means the Government of the Central Provinces and Berar;
- (ii) “Government servant” means a servant of the Crown employed in one of the services of the Province or holding a post in connection with the affairs of the Province;
- (iii) “High Court” means the High Court of Judicature at Nagpur;
- (iv) “Province” means the Central Provinces and Berar.

2. **Manner of making references to Government.**—References to be made to Government or to the Legal Department by any officer under any rule of this Manual shall be addressed to the Secretary to Government, Legal Department, unless otherwise stated.

## PART I.—LAW OFFICERS

### CHAPTER I.—APPOINTMENT, POWERS AND DUTIES OF LAW OFFICERS

3. **Law Officers.**—The law officers of Government are—  
the Advocate-General;  
the Legal Remembrancer;  
the Assistant Legal Remembrancer;  
the Public Prosecutors; and  
the Assistant Public Prosecutors.

#### THE ADVOCATE-GENERAL

4. **Participation in politics.**—No person shall be appointed as Advocate-General unless he agrees in writing to take no part in politics during the tenure of his appointment:

Provided that he may offer himself as a candidate for being chosen as, and be, a member of the Provincial Legislative Assembly, if such candidature and membership do not affect the efficient discharge of his official duties.

5. Leave of absence and pension.—(1) The Advocate-General may be granted leave of absence. During the periods of such leave, he shall not be entitled to any salary.\*

(2) The Advocate-General may be granted casual leave on the same terms and conditions as are applicable to other Government servants.

(3) The Advocate-General shall not leave headquarters without the permission of Government except while on leave granted as above.

(4) The Advocate-General is not entitled to pension.

6. Duties.—(1) The Advocate-General is appointed under section 492 of the Code of Criminal Procedure, 1898, to be Public Prosecutor for all cases before the High Court.

(2) Under sub-section (2) of section 55 of the Government of India Act, 1935, the Governor has assigned, in addition to the duties arising under sub-rule (1), the following duties to the Advocate-General, namely:—

- (a) to prepare briefs for use of counsel engaged in England to represent Government in all appeals and references, civil or criminal, before the Privy Council in which Government is a party;
- (b) to represent Government in the Federal Court in all cases in which Government is a party or in any other case in that Court in which his services may be requisitioned by Government;
- (c) to represent Government in the High Court in the following cases, namely:—
  - (i) all civil or criminal cases on the original side including prosecutions under the provisions of the Code of Criminal Procedure, 1898, before the High Court,
  - (ii) criminal cases which the High Court transfers from any other Court in the province for trial before itself,
  - (iii) appeals to the High Court under the Letters Patent against the judgment of any judge of the Court exercising jurisdiction on the original side,
  - (iv) appeals by accused persons against capital sentences and against convictions for murder in any of its forms;
  - (v) appeals by Government against orders of acquittal,
  - (vi) appeals by accused persons against decisions of Sessions Judges, set down for hearing both parties, in which counsel appears for the appellant,

\*While Mr. W. R. Puranik holds the office of Advocate-General, the grant of leave to him and his salary during such leave will be regulated by the following rule which was in force when he was appointed:—

"The Advocate-General may be permitted to absent himself from his duties for periods not exceeding eight months in the aggregate in each term of office. During such periods of absence he shall draw half of his salary.

NOTE.—The Provincial Government has been pleased to grant Mr. W. R. Puranik, permission to convert the leave on half pay that may be due to him under rule 8 of the Manual into half the leave on full pay.

(Vide Legal Department Memorandum No 223-85-XX, dated the 26th February 1941, to the address of the Advocate-General, Central Provinces and Berar.)

- (vii) revisions in which applications have been filed by Government,
- (viii) revisions filed on behalf of private persons and set down for hearing both parties in which counsel appears for the applicant,
- (ix) proceedings regarding the transfer of cases which have been set down for hearing both parties,
- (x) any other proceedings in which his services may be requisitioned by Government;
- (d) to represent Government in all suits, appeals, revisions, references and other proceedings of civil nature in which Government is a party in the High Court;
- (e) to represent Government in any civil, criminal or quasi-criminal proceedings of special importance in the High Court or in any Court in the Province in which his services may be requisitioned by Government;
- (f) to represent the Court of Wards in the High Court in civil appeals, revisions, references and other proceedings of civil nature in which the Court of Wards is a party, if his services are requisitioned by Government;
- (g) to represent Government in all cases before the Financial Commissioner or any Chief Revenue Authority of the Province in which his services may be requisitioned by Government;
- (h) to represent Government in all departmental or other enquiries instituted under orders of Government in which his services may be requisitioned by Government;
- (i) to represent a party in the High Court or in any Court in the Province in any case in which Government is not a party but in which public interests are involved, if his services are requisitioned by Government;
- (j) to advise Government on any legal matter which may be referred to him for opinion;
- (k) to scrutinize such draft Bills as may be referred to him for scrutiny by the Legislative Department and to advise generally upon the proposed measures;
- (l) to report to the Legislative Department any flaws in any laws and any matters arising out of cases in which he has appeared, which, he considers, should be brought to the notice of Government;
- (m) to attend and take part in the proceedings of the Provincial Legislative Assembly, when required to do so by Government;
- (n) to assist the Legal Remembrancer in conveyancing work and to draft such instruments and other legal documents as Government may require;
- (o) to assist the Legal Remembrancer in all matters in which the Legal Remembrancer may seek his advice;

- (p) to advise district officers as provided in rule 64 in respect of any proceedings, civil or criminal, which he has conducted or which he may be conducting on behalf of Government;
- (q) to advise, when required by Government, the Court of Wards in matters of civil nature in which litigation may arise or which are the subject of litigation;
- (r) to report to Government the result of all cases instituted or conducted by him at the instance of or on behalf of Government;
- (s) to procure copies of any judgment or order passed by the High Court which may be required by Government or may contain comments on action taken by Government; and
- (t) to discharge all such duties as are imposed on him by any law for the time being in force in the Province.

**7. Disabilities.**—(1) The Advocate-General is debarred from accepting a brief from any private person in any criminal case in any Court.

(2) He may accept a brief from a private person in any civil case in any Court :

Provided that (i) such acceptance does not interfere with his duties under these rules, and (ii) it is not a case in which Government or the Court of Wards is a party.

(3) He is debarred from accepting a brief on behalf of a legal practitioner or an advocate in proceedings taken against him under the Legal Practitioners Act, 1879 (XVIII of 1879), or under the Indian Bar Councils Act, 1926 (XXXVIII of 1926).

(4) He shall not accept appointment as a director or as an adviser in any company without the sanction of Government.

(5) He shall not give legal advice to private persons on matters in which the interests of those persons are adverse to Government.

(6) He shall not give advice in any case to private persons if, in his opinion, he is likely to be called upon to advise Government in the same case.

(7) He shall not accept a brief from any person, whether a petitioner or a respondent, in proceedings initiated by an election petition in connection with an election to a local authority or the Provincial Legislative Assembly or the Central Legislature.

**8. Withdrawal from prosecution.**—The Advocate-General shall not withdraw from a prosecution which he has been directed by Government to originate without first consulting the department of Government which directed him to originate it nor shall he withdraw from a prosecution originated by him *suo motu* without first consulting Government in the Legal Department.

### THE LEGAL REMEMBRANCER

9. Offices held by Legal Remembrancer, his powers and duties.—(1) The Legal Remembrancer is Secretary to Government in the Judicial, Legal, Legislative and Assembly Departments, Secretary to the Legislative Assembly and *ex officio* Administrator-General, Official Trustee and Proctor.

(2) As head of the Legal Department and Secretary to Government in that department the Legal Remembrancer exercises control over all the other law officers.

(3) The Legal Remembrancer is appointed under section 492 of the Code of Criminal Procedure, 1898, to be Public Prosecutor for the Central Provinces and Berar in all cases except those before the High Court.

(4) He is authorized to act for the Crown in respect of all judicial proceedings in any civil Court within the Province and is the recognized agent of the Crown under rule 2 of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908.

(5) His duties in addition to those indicated in the preceding sub-rules are—

- (a) to advise the Provincial Government and certain departments of the Central Government in any matter the disposal of which depends upon the interpretation of law;
- (b) to advise executive departments in the drafting of conveyances, agreements and other formal deeds;
- (c) to superintend the conduct of all litigation, civil and criminal, to which Government is a party or in which Government is interested;
- (d) to advise the Court of Wards in all civil litigation and to arrange for the conduct of all suits, appeals and proceedings affecting the Court of Wards, if so directed by Government.

### THE ASSISTANT LEGAL REMEMBRANCER

10. Offices held by Assistant Legal Remembrancer and his duties.—(1) The Assistant Legal Remembrancer is *ex officio* Assistant Secretary of the Legislative Assembly and Under Secretary to Government in the Judicial, Legal, Legislative and Assembly Departments.

(2) He shall give any assistance required of him by the Legal Remembrancer and shall undertake on his own responsibility such of the Legal Remembrancer's duties as Government may, from time to time, allot to him.

(3) The Assistant Legal Remembrancer is empowered to give opinion on all references relating to byelaws proposed by local bodies. As Under Secretary to Government, Legal Department, he is also empowered to dispose of all references relating to civil litigation in which the Crown is concerned. The Assistant Legal Remembrancer may, however, submit important cases to the Legal Remembrancer.

## PUBLIC PROSECUTORS AND ASSISTANT PUBLIC PROSECUTORS

**11. Appointment.**—Recommendations for the post of Public Prosecutor or Assistant Public Prosecutor should be made, in the first instance, by the District Magistrate at the headquarters of the sessions division or other area concerned. He should consult demi-officially the District and Sessions Judge and any other District Magistrate in such division or area, and submit his proposals, together with a list of pleaders practising in his district, through the Commissioner and the Inspector-General of Police to Government. The appointment, as finally agreed upon, shall be made by Government.

**12. Participation in politics.**—No person shall be appointed a Public Prosecutor or Assistant Public Prosecutor unless he agrees in writing to take no part in politics during the tenure of his appointment :

Provided that he may offer himself as a candidate for being chosen as, and be, a member of the Provincial Legislative Assembly, if such candidature and membership do not affect the efficient discharge of his official duties.

**13. Probation and confirmation.**—(1) Every Public Prosecutor or Assistant Public Prosecutor shall be considered to be on probation for a period of six months from the date of his taking charge. At the end of that period the District Magistrate shall submit a report through the District and Sessions Judge and the Commissioner to Government upon his conduct and ability. Should his work prove to have been unsatisfactory, his services may be dispensed with without notice. Should the report be satisfactory, he shall be confirmed. For any sufficient reason Government may extend the period of probation.

(2) The District Magistrate shall, by the 15th January each year, submit a report to Government through the District and Sessions Judge and the Commissioner upon the conduct and ability of the Public Prosecutor or the Assistant Public Prosecutor who has been confirmed under sub-rule (1). The report shall be marked confidential.

**14. Term of office.**—A Public Prosecutor or Assistant Public Prosecutor shall be appointed for a period of five years, including the period of his probation, and may be reappointed for further periods not exceeding five years at a time. Ordinarily no person will be appointed a Public Prosecutor or an Assistant Public Prosecutor after he attains the age of sixty years or continued in that office after he attains that age.

**15. Termination of term.**—(1) Government may, at any time and without assigning any reason, dispense with the services of a Public Prosecutor or an Assistant Public Prosecutor after giving him one month's notice.

(2) A Public Prosecutor or an Assistant Public Prosecutor may resign his appointment after giving one month's notice.

**16. Leave of absence and pension.**—(1) A Public Prosecutor or an Assistant Public Prosecutor shall give intimation to the District Magistrate of his temporary incapacity for work, or intended absence from headquarters for any period except while on leave granted under sub-rule (2) or sub-rule (3).

(2) A Public Prosecutor or an Assistant Public Prosecutor may be granted by the District Magistrate leave of absence for a period not exceeding 10 days at a time. When such leave is granted to a Public Prosecutor, the District Magistrate shall make arrangements for the performance of his duties under rule 19 during the period of his absence.

(3) A Public Prosecutor or an Assistant Public Prosecutor may be granted by Government leave of absence for any period exceeding 10 days at a time. During the absence of the Public Prosecutor a substitute will ordinarily be appointed to perform his duties under rule 19. During the absence of an Assistant Public Prosecutor a substitute may or may not be appointed.

(4) A Public Prosecutor or an Assistant Public Prosecutor is not entitled to pension.

**17. Status and powers.**—(1) The Public Prosecutor is the person to whom under sub-section (1) of section 218 of the Code of Criminal Procedure, 1898, orders notifying commitments are issued by Magistrates within the area for which he is appointed.

(2) A Public Prosecutor is also the Crown Pleader appointed by the Central Government under clause (a) of rule 8-B of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908, in relation to any suit by or against the Secretary of State or the Central Government, or against a public officer in the service of that Government in any Court in the Central Provinces and Berar.

(Government of India, Home Department, Notification No. 204-37-Judicial, dated the 1st April 1938, read with this Government's Legal Department Notification No. 1131-1164-XX, dated the 28th September 1940, and Government of India, Home Department, Notification No. 142-40-I-Judicial, dated the 20th November 1940, read with this Government's Legal Department Notification No. 1296-1598-XX, dated the 26th November 1940.)

**18. Withdrawal from prosecution.**—A Public Prosecutor or an Assistant Public Prosecutor shall not withdraw from a prosecution under section 494, Code of Criminal Procedure, 1898, without first consulting the District Magistrate, or, in his absence, the headquarters Magistrate. If necessary, an application should be made to the Court for a short adjournment to admit of such a consultation.

**19. Duties in criminal Courts.**—(1) The Public Prosecutor shall perform the following duties in criminal Courts, namely :—

(a) he shall conduct the prosecution in all cases committed to the Court of Session in the area for which he is appointed;

(b) he shall appear, when instructed by the District Magistrate, in appeals, references, revisions and other miscellaneous criminal proceedings before such Court of Session;

(c) he shall appear, when instructed by the District Magistrate, in any criminal proceeding before the Court of any Magistrate at the headquarters of the district in which he resides.



(2) The Public Prosecutor may be instructed by the District Magistrate to appear in any criminal proceeding in any other Court in the area for which he is appointed :

Provided that he shall not be so instructed unless he is willing to act and can do so without detriment to the discharge of his other duties under this rule.

**20. Duties in civil Courts.**—Except in cases of a simple nature instituted against Government which may be conducted by the officer in charge, the Public Prosecutor shall be engaged to conduct civil cases on behalf of Government or the Court of Wards tried in any Court, other than the High Court, situated at the headquarters of the district in which he resides :

Provided that—

(i) he shall not be so engaged unless he is willing to act and can do so without detriment to the discharge of his duties in the criminal Courts; and

(ii) the Commissioner may, by special order, appoint another legal practitioner instead of the Public Prosecutor in Court of Wards cases.

**21. Allotment of cases to Assistant Public Prosecutors.**—The Assistant Public Prosecutor shall conduct such cases as may be assigned to him by the Deputy Commissioner or the District Magistrate according as the cases are of civil or criminal nature :

Provided that no case in which the Public Prosecutor is bound to appear or will ordinarily be instructed to appear shall be so assigned unless the Public Prosecutor is unable to conduct it.

**22. Duties in cases under Local Fund Audit Act.**—The Public Prosecutor residing at the headquarters of a District Judge shall, whenever required to do so, appear before the District Judge and represent the Commissioner of the Division in proceedings under clause (a) of section 14 (1) of the Central Provinces Local Fund Audit Act, 1933 (IX of 1933), as provided in rule 138.

**23. Advisory and other duties.**—(1) The Public Prosecutor or Assistant Public Prosecutor shall advise the District Magistrate on any legal question arising out of any criminal proceeding which has been instituted or is proposed to be instituted within the Public Prosecutor's jurisdiction.

(2) He shall also advise the Deputy Commissioner and departmental officers in civil matters of an urgent nature whenever there is no time to make a reference to the Legal Remembrancer and shall further render them such assistance as is required under these rules in matters connected with suits and appeals filed or proposed to be filed by or against Government within the Public Prosecutor's jurisdiction.

(3) No fees shall be payable for any work done under this rule.

**24. Disabilities.**—(1) A Public Prosecutor shall not appear for the defence in any inquiry under Chapter XVIII of the Code of Criminal Procedure, 1898 (Inquiry into cases triable by the Court of Session or High Court).

(2) He shall not take up any criminal case on behalf of any private person, whether a complainant or an accused, in which he has reason to believe that his services have been, or are likely to be, requisitioned by Government.

(3) He shall not give legal advice to private persons in matters in which the interests of these persons are adverse to Government.

(4) He shall not give advice in any case to private persons, if, in his opinion, he is likely to be called upon to assist Government in the same case.

**25. Relations with District Magistrates and police.—**(1) The Public Prosecutor or Assistant Public Prosecutor should apply for any instructions he may need to the District Magistrate, and shall keep in close touch with him in the discharge of his duties in the criminal Courts.

(2) He shall also keep in close touch with the District Superintendent of Police, and other responsible police officers, in the discharge of his duties in the criminal Courts, and shall furnish such police officers with any information or reports relating to such cases as may reasonably be demanded from him.

**26. Government's power to engage private pleaders instead of Public Prosecutors.—**Nothing contained in this chapter which provides for the engagement of a Public Prosecutor or an Assistant Public Prosecutor in any case shall preclude Government from engaging in his place a private legal practitioner for conducting that case.

## CHAPTER II.—EMOLUMENTS OF LAW OFFICERS

**27. Emoluments of Advocate-General.—**(1) Apart from the remuneration fixed under section 55 of the Government of India Act, 1935, the Advocate-General shall not be entitled to receive from Government any fees or office allowance :

Provided that whenever the Advocate-General represents Government in an appeal to the High Court in any proceedings for acquisition of land for the purpose of a local authority or a company, he shall be entitled to such fees as may be fixed by the Provincial Government for that appeal. These fees shall be payable by the local authority or the company, as the case may be.

(2) The Advocate-General shall be entitled to receive such fees as may be agreed upon between himself and the estate concerned for appearing in the High Court in Court of Wards cases under clause (f) of rule 6 (2).

(3) He shall also be entitled to receive a fee of Rs. 25 from the estate concerned for each opinion given in Court of Wards cases under clause (g) of rule 6 (2) except when the question is one between Government and the Ward in which case he shall receive no fee.

(4) The cost of the Advocate-General's office establishment and office contingencies is met from funds provided in the budget of the Legal Remembrancer.

**28. His travelling allowance.**—Whenever the Advocate-General is required to leave his headquarters in connection with a case in which his services have been requisitioned under any of these rules, he shall be entitled to draw travelling allowance at the rates prescribed for an officer of the first grade for journeys on tour in the Supplementary Rules made by Government under the Fundamental Rules, except that his daily allowance will be Rs. 5 for each day on which he is engaged in the performance of his duties in connection with that case at the place of his visit and does not travel. His daily allowance in any province outside the Central Provinces and Berar will be governed by the said Supplementary Rules.

**29. Public Prosecutor's remuneration.**—The remuneration of a Public Prosecutor consists of—

- (i) case fees; and
- (ii) special fees.

**30. Fees in criminal cases.**—Except as otherwise provided in these rules, the case fees payable to a Public Prosecutor in criminal cases are as follows :—

- (i) For the first day of each session or magisterial trial—Rs. 25.
- (ii) For each subsequent hearing in such trial—Rs. 15.

**NOTE.**—A day on which only a spot inspection is made or a witness is examined on commission shall be deemed to be a day of subsequent hearing.

- (iii) For each appeal in the Court of Session—Rs. 25.

- (iv) For each reference or revision or any miscellaneous criminal proceeding not specifically provided for involving any number of persons, provided there is a joint hearing in respect of all—Rs. 15.

Provided that—

- (a) no fee shall be paid for a hearing fixed for delivering judgment only,
- (b) when two or more persons convicted in a single case appeal, whether jointly or severally, and the appeals are all heard together, the case fee shall be at the rate of Rs. 10 for each appellant, subject to a minimum of Rs. 30 and a maximum of Rs. 75;
- (c) when one or more sessions or magisterial cases are fixed for hearing on the same day, then—
  - (i) if none of such cases is taken, the Public Prosecutor shall be entitled to a fee of Rs. 12-8-0, and
  - (ii) if one or more of such cases is taken he shall be entitled to the day's fee for each case taken and to no fee for any case not taken.

**Explanation.**—A case which is merely adjourned on any day is not to be considered as taken on that day.

**31. Fees in civil cases.**—The case fees payable to a Public Prosecutor in civil cases are as follows :—

- (i) The fees of Public Prosecutors in civil cases in which they appear for Government or the Court of

Wards shall be those prescribed by the rules for the time being in force under section 27 of the Legal Practitioners Act, 1879 (XVIII of 1879) :

Provided that where the pecuniary value of the suit cannot be defined, or when defined is so low that the fees calculated thereon are trifling, the Deputy Commissioner may fix a fee not exceeding Rs. 50 for the case, or, with the previous sanction of the Commissioner, a fee not exceeding Rs. 150.

(ii) The Public Prosecutor shall be paid fees for his appearance before the District Judge under rule 138 as above provided.

(iii) In a civil suit in which the Public Prosecutor is not already engaged but is asked by the Deputy Commissioner or the officer in charge of the suit to appear and apply for an adjournment, the Public Prosecutor may be paid a fee not exceeding Rs. 5 for such appearance.

**32. Special fees.**—A special fee of Rs. 12-8-0 shall be allowed to a Public Prosecutor—

(i) for any day fixed by the Sessions Judge for hearing sessions cases but on which no sessions case is taken, if it is a day in the middle of a session and not one after the last case of the session has been disposed of;

(ii) for any day, on which Courts are working, spent by him in a journey between the headquarters of the district in which he resides and another district headquarters where he has to attend the Court of Session, if the journey entails an encroachment upon Court hours.

*Explanation.*—A case which is merely adjourned on any day is not to be considered as taken on that day.

**33. Payment of fee when engagement is subsequently cancelled.**—In any case in which a Public Prosecutor has been engaged and his engagement is subsequently cancelled for any reason by the authority who had sanctioned it, that authority may, if this is considered necessary, sanction payment to the Public Prosecutor of such fee not exceeding Rs. 25, or such higher fee with the permission of the Provincial Government, as may be considered reasonable in the circumstances.

**34. Travelling allowance.**—(1) A Public Prosecutor travelling on duty under these rules shall be entitled to draw travelling allowance at the rates prescribed for an officer of the second class in the Supplementary Rules made by Government under the Fundamental Rules and to receive a daily allowance of Rs. 2-8-0 for each day on which he is engaged in the performance of that duty at the place of his visit and does not travel.

(2) A Public Prosecutor conducting a trial in a Court of Session or a Court of a Magistrate away from his headquarters shall be deemed to be engaged on duty in that Court on Sundays or holidays which may intervene during the trial even though he leaves the place of trial during those days.

(3) A Public Prosecutor returning to headquarters without finishing the work on which he is engaged shall not get travelling allowance for the journeys occasioned by the return unless the return was with the previous permission of the District Magistrate or the Deputy Commissioner, as the case may be, or was, in the opinion of the District Magistrate or the Deputy Commissioner, in the public interest.

**35. Fees for work outside jurisdiction.**—In cases where a Public Prosecutor is engaged for Government in a Court of Session, a Magistrate's Court or a Civil Court which lies outside his jurisdiction, he shall be entitled to the same case fees as he would have been entitled had such Court been situate within his jurisdiction.

**36. Necessity of Government's sanction for excess fees.**—The case fees paid to a Public Prosecutor are to be regarded as average fees, and will be paid to him whether the case is a simple one or a complex one. The sanction of Government is required to the payment of any fee in excess of the prescribed scale, and will be given only in cases of great complexity upon the special recommendation of the District Magistrate or the Deputy Commissioner, as the case may be, and the Commissioner.

**37. Fixation of fees in doubtful and special cases.**—In cases where there is doubt as to the applicability of the above scales, or where the above scales do not apply, the fee shall be fixed by Government with due regard to the work involved in the case.

**37-A. Assistant Public Prosecutor's remuneration.**—An Assistant Public Prosecutor shall be entitled to case fees, special fees, travelling allowance and daily allowance at the same rate as a Public Prosecutor.

**38. Establishment and hot weather arrangement.**—(1) Every Public Prosecutor will be allowed one peon, who will be deputed from the Sessions Judge's establishment, to work under him. The Sessions Judge may change the peon so deputed from time to time as he may consider desirable.

(2) Wherever the Public Prosecutor has a separate room provided for his use, he will receive hot-weather establishment on the same scale as an Extra-Assistant Commissioner, the charges therefor being met from the allotment for contract contingencies of the Sessions Judge's office.

### CHAPTER III.—EMPLOYMENT OF PRIVATE LEGAL PRACTITIONERS AND THEIR EMOLUMENTS

**39 Employment of counsel in criminal cases wherein Public Prosecutor is bound to appear but is not available.**—(1) In any criminal case in which the Public Prosecutor is bound to appear or may be instructed to appear under rule 19 but is unable to appear, the District Magistrate may engage either the Assistant Public Prosecutor or a private legal practitioner.

(2) This rule should be employed only to tide over temporary inability of the Public Prosecutor and should not be used

if there is reason to believe that the inability is likely to be prolonged. In the latter case the District Magistrate should make proposals for the appointment of a successor, either temporarily or permanently, as the circumstances may require.

**40. Employment of counsel in criminal cases wherein Public Prosecutor is not bound to appear.**—In any criminal case in which the Public Prosecutor is not bound to appear or is not instructed to appear under rule 19, the District Magistrate may engage either the Assistant Public Prosecutor or a private legal practitioner, provided that the District Magistrate considers the case to be of such special difficulty or importance that it cannot adequately be conducted by the police prosecuting staff.

**41. Counsel to be local resident.**—The private legal practitioner engaged under rule 39 or rule 40 should ordinarily be resident of the place at which the Court in which the case is to be conducted is situate.

**42. Private arrangement by Public Prosecutor in certain cases.**—When the Public Prosecutor or the Assistant Public Prosecutor has taken charge of a case but is unavoidably prevented from appearing at any particular hearing, he may make a private arrangement with another legal practitioner to appear on his behalf. In such cases the Public Prosecutor or the Assistant Public Prosecutor shall be responsible for the whole conduct of the trial, and shall receive the case fees. Government shall not be responsible in any way for the payment of the fees of the private legal practitioner.

**43. Employment of counsel in civil cases in absence of Public Prosecutor.**—(1) In any civil case in which the Public Prosecutor is entitled to be engaged under rule 20 but is unwilling or unable to appear and in any civil case in which he is not so entitled the Deputy Commissioner may engage either the Assistant Public Prosecutor or a private legal practitioner :

Provided that—

- (i) no legal practitioner shall be engaged in a case of a simple nature instituted against Government which the officer in charge can conduct efficiently in Court without the assistance of a legal practitioner;
- (ii) in Court of Wards cases the Deputy Commissioner shall act subject to the control of the Commissioner.

*Explanation.*—In this rule the expression “officer in charge” means the officer to whom the conduct of the case in Court is entrusted by the head of the department to which the case relates, in consultation, if necessary, with the Deputy Commissioner.

(2) The private legal practitioner engaged under sub-rule (1) should ordinarily be resident of the place at which the Court in which the case is to be conducted is situate.

**44. Employment of counsel in absence of Advocate-General.**—Government will make arrangements for its representation before the High Court in cases in which for sufficient reason the Advocate-General is unable to appear.

**45. Employment of counsel for special reasons in civil or criminal cases.**—In any civil or criminal case Government may sanction of its own initiative or on a representation received from local officers—

- (a) the engagement of more than one private legal practitioner to represent Government, or
- (b) the engagement of a private legal practitioner to assist the Advocate-General, the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, or
- (c) any special arrangements which the circumstances of the case may require.

**46. Fees of counsel in criminal cases.**—(1) When a private legal practitioner is engaged to represent Government in any criminal case before any Court, other than the High Court, he shall receive fees at the following rates :—

(i) For the first day of each sessions or magisterial trial—Rs. 20.

(ii) For each subsequent hearing in such trial—Rs. 15.

**NOTE.**—A day on which only a spot inspection is made or a witness is examined on commission shall be deemed to be a day of subsequent hearing.

(iii) For each appeal in the Court of Session—Rs. 15.

(iv) For each reference or revision or any miscellaneous criminal proceeding not specifically provided for, involving any number of persons, provided there is a joint hearing in respect of all—Rs. 10.

Provided that—

(a) no fee shall be paid for a hearing fixed for delivering judgment only,

(b) when two or more persons convicted in a single case appeal, whether jointly or severally, and the appeals are all heard together, the case fee shall be at the rate of Rs. 8 for each appellant, subject to a minimum of Rs. 20 and a maximum of Rs. 60;

(c) when one or more session or magisterial cases are fixed for hearing on the same day, then—

(i) if none of such cases is taken, the private legal practitioner shall be entitled to a fee of Rs. 7-8-0, and

(ii) if one or more of such cases is taken he shall be entitled to the day's fee for each case taken and to no fee for any case not taken.

**Explanation.**—A case which is merely adjourned on any day is not to be considered as taken on that day.

(2) When a private legal practitioner is engaged to represent Government in any criminal case before the High Court, he shall receive fees at the following rates :—

(i) For each appeal—Rs. 30.

(ii) For each reference or revision or any miscellaneous criminal proceeding not specifically provided for, involving any number of persons, provided there is a joint hearing in respect of all—Rs. 20.

Provided that when two or more persons convicted in a single case appeal, whether jointly or severally, and the appeals are all heard together, the case fee shall be at the rate of Rs. 12 for each appellant, subject to a minimum of Rs. 35 and a maximum of Rs. 80.

**47. Fees of counsel in civil cases.**—The fees of private legal practitioners in civil cases in which they appear for Government or the Court of Wards shall be those prescribed by the rules for the time being in force under section 27 of the Legal Practitioners Act, 1879 (XVIII of 1879) :

Provided that where the pecuniary value of the suit cannot be defined, or when defined is so low that the fees calculated thereon are trifling, the Deputy Commissioner may fix a fee not exceeding Rs. 50 for the case, or, with the previous sanction of the Commissioner, a fee not exceeding Rs. 150.

**48. Necessity of Government's sanction for excess fees.**—The case fees paid to a private legal practitioner are to be regarded as average fees, and will be paid to him whether the case is a simple one or a complex one. The sanction of Government is required to the payment of any fee in excess of the prescribed scale, and will be given only in cases of great complexity upon the special recommendation of the District Magistrate or the Deputy Commissioner, as the case may be, and the Commissioner.

**49. Travelling allowance of counsel.**—The grant of travelling allowance and daily allowance to a private legal practitioner leaving his headquarters in connection with Government work shall be governed by rule 34 :

Provided that daily allowance shall be paid at Rs. 3-8-0 per day.

**50. Fees of counsel engaged to defend pauper accused.**—

(1) The following is the scale of fees for counsel engaged by Government to represent pauper accused :—

(i) In the commitment proceedings before the committing Magistrate—

For each case—Rs. 20.

(ii) In sessions trial—

For the first day of each trial—Rs. 20.

For each subsequent hearing in such trial—Rs. 15.

NOTE.—A day on which only a spot inspection is made or a witness is examined on commission shall be deemed to be a day of subsequent hearing.

Provided that—

(a) no fee shall be paid for a hearing fixed for delivering judgment only or for any day on which a case is merely adjourned,

(b) it shall be open to the District Magistrate to fix such fees as he thinks fit subject to the maximum rates prescribed in this sub-rule.

(iii) For proceedings before the High Court—

For each case—Rs. 30.

(2) These fees shall not be exceeded in any case.



(2) The reference should show the exact nature of the applicant's title in the security offered; and when the applicant is a Hindu, the circumstances of his family as to jointness and the number of co-parceners should be ascertained and stated.

(3) The history of the title should be traced from twelve years prior to the date of the application, and relevant documents, or certified copies thereof, submitted when obtainable.

**61. Personal discussion.**—(1) Much time and work may be saved to all concerned by oral discussion; and both the officer making a reference and the Legal Remembrancer may ask for an appointment for this purpose.

(2) When the officer making the reference desires an appointment, he should ordinarily make the reference first in accordance with rule 58, to enable the Legal Remembrancer to carry on the discussion profitably.

**62. Demi-official references.**—(1) References by demi-official letter are generally to be deprecated. However, a short demi-official letter on one or two simple issues is frequently a convenience to departmental officers, and the Legal Remembrancer will answer them promptly; but he has power to return any such reference and ask that it may be submitted in the usual manner.

(2) An opinion expressed by the Legal Remembrancer on a demi-official reference may only be used on the responsibility of the departmental officer concerned, and may not be quoted or referred to as an opinion by the Legal Remembrancer.

(3) The Legal Remembrancer will refuse to answer any demi-official reference wherein a departmental officer seeks for arguments to support him in a controversy with his departmental superior, unless the reference is made through the departmental superior.

**63. Legal Remembrancer to advise certain departments of Central Government.**—According to an arrangement agreed upon between the Central Government and the Provincial Government, the Legal Remembrancer gives advice to certain departments of the Central Government on the understanding that special arrangements, if any, which may have been made by any central department with the Provincial Government for the conduct of its legal work in this Province or otherwise will continue.

## CHAPTER V.—REFERENCES TO THE ADVOCATE-GENERAL

**64. Direct references to Advocate-General.**—References may be made direct to the Advocate-General on matters relating to any case which he has conducted or which he may be conducting—

(a) by the District Magistrate, if the case is of criminal nature;

(b) by the officer in charge, if the case is of civil nature. Otherwise no direct reference shall be made to the Advocate-General by any officer.

*Explanation.*—For the purposes of this rule, the officer in charge means the officer in charge as explained in rule 122.

65. Advocate-General's opinion to be taken in cases in which he may have to appear in Court.—(1) Whenever the Secretary to Government in the Legal Department records an opinion which, if accepted and acted upon by Government, would involve an appearance by the Advocate-General before the High Court or any other Court, he will, as a matter of course, pass it on unofficially to the Advocate-General, in order that the latter may note whether he concurs to such extent as is necessary to enable him to argue the case on the lines indicated. If he does not concur to that extent, the Advocate-General should record his reasons in full. Otherwise it will be unnecessary for him to do more than indicate his general assent.

(2) If the Advocate-General records a dissentient opinion, the case will be resubmitted to Government for orders.

### **PART III.—CONTROL OF GOVERNMENT LITIGATION IN CRIMINAL COURTS**

#### **CHAPTER VI.—PROCEDURE IN CASES BEFORE SUBORDINATE COURTS**

##### **A.—IN MAGISTRATES' COURTS**

66. (1) Powers of police prosecuting staff.—Under section 492 of the Code of Criminal Procedure, 1898, all Prosecuting Sub-Inspectors of Police are appointed to be Public Prosecutors in the districts to which they are posted, for cases tried or enquired into by Magistrates after investigation by the police, for cases tried or enquired into by Magistrates under the Tea Districts Emigrant Labour Act, 1932 (XXII of 1932), and for appeals heard by Magistrates arising from such cases.

(2) Engagement of Public Prosecutor in Magistrates' Courts.—The prosecuting staff maintained by the Police Department should suffice for the great majority of criminal trials in Magistrates' Courts. In cases of special difficulty or importance, however, the District Magistrate may, subject to the provisions of rule 19, instruct the Public Prosecutor or Assistant Public Prosecutor to appear. The power should be sparingly used and only when the District Magistrate considers that the police prosecuting staff is inadequate.

67. Notice of appeal in Magistrates' Courts.—The Prosecuting Inspectors and Prosecuting Sub-Inspectors of Police are the officers appointed under section 422 of the Code of Criminal Procedure, 1898, for the districts to which they are posted to whom notices are to be given of the hearing of appeals filed in the Court of the District Magistrate or in a Court subordinate to the Court of the District Magistrate.

68. Responsibility of Prosecuting Inspector.—The responsibility of deciding whether an appeal is important enough to require the representation of the Crown rests primarily with the Prosecuting Inspector or Prosecuting Sub-Inspector who will be subject to the control of his superior officers. His responsibility extends to appeals in all cases, whether originally challenged by the police or not.

**69. Representation of Crown in appeals before Magistrates.**—In these appeals representation of the Crown will, as a rule, be unnecessary, and where it is deemed necessary, the police prosecuting staff should be sufficient. In rare cases, involving intricate questions of law, the District Magistrate may, subject to the provisions of rule 19, engage the Public Prosecutor.

#### B.—IN COURTS OF SESSION

**70. Public Prosecutor to appear in all sessions trials.**—(1) On receipt of an order notifying the commitment of an accused to the Court of Session as provided in rule 17 (1), the Public Prosecutor shall conduct the prosecution on behalf of Government in that Court.

(2) As section 270 of the Code of Criminal Procedure, 1898, requires that in every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor, the District Magistrate shall arrange for the appointment of a substitute under rule 39 whenever the Public Prosecutor is not available.

**71. Notice of appeal in Court of Session.**—The District Magistrate is the officer appointed under section 422 of the Code of Criminal Procedure, 1898, for his district to whom notices are to be given of the hearing of appeals filed in the Court of Session.

**72. Appearance of Public Prosecutor in appeals, etc.**—If the District Magistrate considers that any appeal, reference, revision or other miscellaneous criminal proceeding before a Court of Session is of public importance or involves intricate questions of law or fact, or is a case in which the other side is represented by a counsel, he may instruct the Public Prosecutor to appear on behalf of Government under rule 19 (1).

#### C.—SUPPLY OF DOCUMENTS AND OTHER FACILITIES TO PUBLIC PROSECUTORS

**73. Supply of copies in sessions cases.**—In sessions cases, a copy of the charge, the reasons for commitment and the depositions of witnesses, as well as of the statement of the accused in the committing Magistrate's Court, should be supplied by the office of the Sessions Judge to the Public Prosecutor concerned immediately after commitment. A copy of the translation of the case diary should also be supplied, if convenient.

**74. Copies of original case diaries in sessions cases.**—(1) A copy of the original case diary may be supplied to the Public Prosecutor by the Sessions Judge, on special application in each case. These copies need be granted only when the Sessions Judge has been unable to allow the Public Prosecutor reasonable facility for perusing the diary before the trial, and if the copy of the translations supplied is not sufficient.

(2) Case-diaries are confidential documents and Public Prosecutors share the responsibility of the Court that their contents are not divulged save in accordance with law.

**75. Facility for inspection of records in sessions cases.**—It is essential that the Public Prosecutor should also have access to the whole record of sessions cases, and he should be

afforded every facility for inspection. A difficulty may arise if the Public Prosecutor does not reside at the headquarters of the Sessions Judge or the Additional Sessions Judge who may try a particular sessions case. If such a contingency arises, the Sessions Judge or the Additional Sessions Judge, as the case may be, should arrange to send the record and the case diary, as early as may be, under confidential cover to the District Magistrate of the district in which the Public Prosecutor resides. If a case is committed too late to permit of this arrangement, it should be set down for hearing by the Sessions Judge towards the end of the sessions, and the Public Prosecutor allowed access to it during the earlier trials.

**76. Supply of copies in other cases before a Court of Session.**—In a case of appeal, reference or revision before a Court of Session, copies of records will not ordinarily be supplied to a Public Prosecutor, who will have access to the original records in the Court of Session. But where type-written copies of depositions of witnesses are supplied to an accused person, copies thereof will also be supplied to the Public Prosecutor or the Assistant Public Prosecutor concerned. If and when a type-written copy of a judgment of a Magistrate of the first class, which is appealable to a Court of Session, is supplied to an accused person and if the case in which it was delivered is an important one, a copy thereof will also be supplied to the Public Prosecutor or the Assistant Public Prosecutor for his use in case an appeal is filed in the Court of Session.

## CHAPTER VII.—PROCEDURE IN CASES BEFORE THE HIGH COURT AND OTHER AUTHORITIES

### A.—APPEALS BY CONVICTED PERSONS

**77. Notice to District Magistrate and Advocate-General from High Court.**—(1) The District Magistrate is the officer appointed under section 422 of the Criminal Procedure Code, 1898, to whom notices of the date of hearing appeals filed in the High Court shall be sent.

(2) Under the Rules of the High Court notices of the date of hearing are also sent by the High Court to the Advocate-General through the Legal Department in the undermentioned cases of appeal if they are set down for hearing both parties:—

(a) Appeals by accused persons against decisions of Sessions Judges in which counsel appear for the appellant;

(b) Appeals in murder cases.

(3) The Advocate-General shall appear on behalf of Government in all the cases referred to in sub-rule (2) without further instructions.

**78. Requisition by District Magistrate in important cases.**—The arrangements described in rule 77 should ordinarily suffice for all appeals against the decisions of Sessions Judges; but the District Magistrate may make certain of the appearance of the Advocate-General in any important appeal by sending a requisition for his services to the Legal Department.

**79. Requisition by District Magistrate in section 30 cases.**—District Magistrates are responsible for the proper conduct of important appeals before the High Court against sentences by Magistrates exercising powers under section 30 of the Code of Criminal Procedure, 1898. Requisitions for the services of the Advocate-General in these appeals should be sent to the Legal Department direct.

#### **B.—APPEALS BY GOVERNMENT AGAINST ACQUITTALS**

**80. Responsibility of District Magistrates.**—Special attention should be paid to the provisions of section 417 of the Code of Criminal Procedure, 1898, enabling Government to appeal against orders of acquittal. District Magistrates should bear in mind the responsibility which rests upon them of bringing to notice instances of perverse or careless acquittals in which the importance of the case and the probability of securing a conviction justify a resort to this exceptional procedure.

**81. Procedure of District Magistrate.**—The proceedings in such cases will, ordinarily, be initiated by the District Magistrate, either on his own motion or on that of the police. He will forward the record of the case, together with a concise history of the facts and statement of the grounds of appeal, to the Commissioner of division, who will, if he agrees with the District Magistrate, submit the case, for the orders of Government. In submitting proposals for appeals against acquittals, Commissioners and District Magistrates should invariably give their own independent opinion and not merely forward the representations of Public Prosecutors or Assistant Public Prosecutors or District Superintendents of Police.

**82. Special reference by Inspector-General of Police.**—In any case in which the Inspector-General of Police considers that an appeal against an acquittal should be filed, he may move the District Magistrate and if he refuses to move in the matter, the Commissioner. If both the District Magistrate and Commissioner refuse or the Commissioner, disagreeing with the District Magistrate, refuses to move in the matter and the Inspector-General disagrees with the decision or should the circumstances of any case be such that a reference to the District Magistrate and Commissioner would involve such delay as to prevent the appeal being filed within the prescribed time, the Inspector-General may refer the case direct for the orders of Government.

**83. References to be prompt.**—All cases to be referred for orders of Government should reach the Legal Department within a month and fifteen days from the date of the order of acquittal.

**84. Facilities to accused.**—(1) When an appeal is filed against an acquittal, the District Magistrate will be responsible for seeing that the accused, should he so desire, has an opportunity of attending when the appeal is heard. To this end, if the accused is in custody, the District Magistrate will in every case make necessary arrangements for his production in the

High Court on the date of hearing. If the accused is not in custody and cannot afford to bear the expenses for the journey to Nagpur, the District Magistrate should provide him with sufficient funds in accordance with sub-rule (8) for the journey to Nagpur and back.

(2) The District Magistrate should further intimate to the accused, if he cannot afford to provide legal assistance at his own cost, that if he wishes to engage a counsel, Government would provide a sum of Rs. 30 as counsel's fee. The intimation should be given in every case whether the accused is likely to accept the offer or not. If the accused is in jail, the intimation should be given through the Superintendent of the Jail. The accused should also be informed that he may select his own counsel. If the counsel selected by him wants more than Rs. 30 as his fee, the accused will have to pay the extra amount.

(3) If an appeal is filed against the acquittal of several accused in a case and if it appears from the defences disclosed that it is desirable to entrust their defence in the High Court to more counsel than one, Government would provide a sum of Rs. 30 as counsel's fee for each counsel. The District Magistrate shall decide how many counsel are necessary and inform the accused concerned accordingly.

(4) If the accused wishes to select his own counsel, the District Magistrate shall furnish him with a certificate that Government would pay Rs. 30 as counsel's fee to the counsel engaged by the accused for his defence in the High Court.

(5) If the accused is in jail, the Superintendent of the Jail should put him in communication with the counsel selected by him.

(6) If an accused desires that Government should arrange for a counsel for him, the District Magistrate should address the Legal Department for making the necessary arrangements.

(7) The fee shall be paid to the counsel who appears in the High Court for the accused on his producing the certificate referred to in sub-rule (4) or the authority received by him from the Legal Department under sub-rule (6).

(8) The funds to be provided to the accused by the District Magistrate under sub-rule (1) shall consist of a third class railway fare from the district headquarters to Nagpur and back *plus* Rs. 2.

(9) For the purposes of sub-rules (1) and (2) the decision as to the ability of the accused to afford the expenses referred to therein shall in all cases rest with the District Magistrate who will ordinarily be guided by the opinion of the Magistrate by whom the accused was acquitted.

**85. Applications to Deputy Commissioner from private persons.**—In any case in which a private person makes an application to the Deputy Commissioner or the District Magistrate requesting him to move the Provincial Government under section 417 of the Code of Criminal Procedure, 1898, to present an appeal

against acquittal, he may decline to do so if he sees no adequate reason to move the Provincial Government. If, however, he is of opinion that an appeal should be presented, he should follow the procedure laid down in rules 81, 83 and 84.

### C.—REVISION CASES

86. Notice of revision cases in High Court.—(1) Under the Rules of the High Court notices of the date of hearing are sent by the High Court to the Advocate-General, through the Legal Department, in the undermentioned cases of revision if they are set down for hearing both parties :—

- (a) petitions by private persons for revision of judgments or orders of Sessions Judges in which the application is either filed by counsel or in which counsel enters appearance for the applicant before the petition is admitted for hearing parties;
- (b) in all cases of enhancement of sentence when the Court considers there is *prima facie* case for alteration of the sentence.

(2) If on receipt of a report from the District Magistrate or otherwise it is considered that the case is not important or is one in which Government is not interested, the notice referred to in sub-rule (1) may be withheld by the Government which will inform the High Court that Government does not intend to be represented in the case.

(3) On receipt of the notice referred to in sub-rule (1), the Advocate-General shall appear on behalf of Government in all these cases without further instructions.

87. Procedure on issue of rule to show cause.—(1) It is also the practice of the High Court, when it sets down an application for revision for hearing both parties, to issue a rule calling upon the District Magistrate to show cause why the application should not be allowed. Such a rule should be construed as an opportunity afforded to the District Magistrate to take steps to defend a conviction; it should not be regarded as a command to show cause in every case.

(2) If the District Magistrate considers that the case is important or one in which Government is interested and the order attacked should be upheld, he should show cause in a brief report stating reasons in support of his view and forward it to the Legal Department with a requisition for the services of the Advocate-General. Copies of all papers received from the High Court should be sent with the report.

(3) In cases in which the District Magistrate considers that the order attacked need not be upheld, he should likewise send a brief report stating reasons for his view to the Legal Department.

(4) In no case should a reply to a rule be sent direct to the High Court by the District Magistrate.

88. Supply of copies to Advocate-General.—(1) All rules received by the District Magistrate from the High Court under sub-rule (1) of rule 87 shall be treated and disposed of as urgent references. If the District Magistrate decides to require the appearance of the Advocate-General in any case, action shall be

taken as expeditiously as possible for the preparation of a copy of the judgment or the final order in the case and a copy of the evidence and other connected papers and these copies shall be forwarded to the Legal Department with the requisition. It should be borne in mind that the copies have to reach the Advocate-General at least a week before the date of hearing.

(2) If the records are not available to the District Magistrate or they are too voluminous for copies to be prepared in his office in time, the District Magistrate shall make a report accordingly. The Advocate-General shall thereupon inspect the records in the High Court and make arrangements for procuring copies if necessary in consultation with the Legal Department.

#### 89. Procedure on reports under section 438, Cr. Pr. Code.

—(1) When a Sessions Judge makes a report to the High Court under section 438 of the Code of Criminal Procedure, 1898, he should forward a copy of his report to the District Magistrate.

(2) When the District Magistrate considers that a report made by himself or by the Sessions Judge concerns a serious failure of justice and is of a difficult nature requiring that it should be supported before the High Court, he should forward a copy of the report to the Legal Department with a requisition for the services of the Advocate-General and any further instructions that may appear necessary.

90. Procedure in other cases of revision.—(1) If the District Magistrate considers that a case relating to a proceeding before the Court of Session should be reported to the High Court, he may apply to Government to move for revision. Such application should show grounds for revision and should be submitted through the Commissioner.

(2) If Government supports the application, the Advocate-General will be instructed to apply for revision.

(3) Under the rules of the High Court (*vide* Appendix I), an application for revision in a criminal case before the High Court is ordinarily to be filed within sixty days. Every case of revision to be referred for the orders of Government should therefore reach the Legal Department within six weeks from the date of the order against which a revision application is to be made.

#### D.—COMBINATION OF APPEALS AND APPLICATIONS FOR REVISION

91. Procedure relating to appeals by accused in cases involving capital charge.—(1) Whenever an appeal is filed in the High Court by an accused person in a case involving a capital charge, the practice is for the High Court to give a notice of the fact to the Advocate-General for the information of Government and for Government to inform the High Court through the Advocate-General, within two weeks thereafter whether Government intends to file an application for enhancement of sentence passed on the appellant or other accused, if any, or an appeal against an acquittal, if any, in that case.

(2) In order to enable Government to inform the High Court of its decision in such cases within the prescribed period it is necessary that the procedure hereafter laid down in this rule should be followed.



(3) The District Magistrate should examine the record of every case involving a capital charge immediately after it is disposed of by a Court of Session with a view to see whether there is any sufficient reason for filing an appeal against any acquittal or an application for enhancement of any sentence and send a report on the case in detail to the Advocate-General stating, whether such an appeal or application should be filed or not and forward a copy of that report to Government. If an appeal or application is proposed to be filed, the copy to be sent to Government should be sent through the Commissioner. The record of the case, if available, should be sent to the Advocate-General.

(4) The Advocate-General should forward to Government a copy of every notice as soon as it is received from the High Court under sub-rule (1) and after examining the record of the case when it is available in the High Court and taking into consideration any report made by the District Magistrate under sub-rule (3), if received in time, advise Government regarding the advisability or otherwise of filing an appeal against acquittal or application for enhancement of sentence in the case.

(5) The decision of Government will be communicated to the Advocate-General for such action as may be necessary.

(6) It will be noticed that the procedure laid down in rules 80 to 83 and rule 90 is of general application, while the procedure laid down in this rule applies specially to cases in which a capital charge is involved and in which an appeal by an accused person has been filed in the High Court. The object of laying down this special procedure is that other appeals and applications, if any, arising in such a case may be heard by the High Court along with the appeal already filed by an accused person in that case.

#### E.—APPLICATIONS TO HIGH COURT FOR TRANSFER OF CASES

**92. Procedure in cases of transfer.**—(1) Under the rules of the High Court notices of the date of hearing are sent by the High Court to the Advocate-General through the Legal Department in all proceedings regarding the transfer of cases if they are set down for hearing both parties.

(2) Such cases are sometimes of great administrative importance, and it is necessary that the Advocate-General should be fully instructed by the local authorities. As soon as the District Magistrate receives notice of the date of the hearing he should at once communicate full details, confidentially, if necessary, to Government which will instruct the Advocate-General: provided that in a proceeding relating to the transfer of a complaint case in which Government is not interested or in a case which is not of public importance, a notice issued under sub-rule (1) may be withheld by Government which will inform the High Court that Government does not intend to be represented in the case.

#### F.—MISCELLANEOUS PROVISIONS REGARDING CRIMINAL CASES

**93. Appearance of Advocate-General at the instance of High Court.**—It may occasionally happen that, in an appeal or other criminal proceeding, the High Court may, *suo motu*, express

a desire that the Advocate-General should appear on behalf of Government although his services have not been previously requisitioned. In such a case the Advocate-General should at once refer the matter to Government for orders.

**94. Assistance to Advocate-General.**—(1) It may occasionally happen in a criminal appeal or in a case of exceptional difficulty before the High Court that the Advocate-General would be materially assisted by an interview with, or the help of, the Public Prosecutor, Assistant Public Prosecutor or private legal practitioner engaged in the case, or the Prosecuting Inspector, or the Investigating Officer who may have dealt with the case. The District Magistrate should arrange for this when the necessity arises, but Government's sanction should be obtained in advance before the services of the Public Prosecutor or Assistant Public Prosecutor or private legal practitioner are requisitioned under this rule.

(2) When applying for Government's sanction under sub-rule (1), the District Magistrate should explain the reasons for which such assistance is considered necessary and, if such application is made at the instance of the Advocate-General that fact should also be stated. It should not be assumed that Government's sanction will be given as a matter of routine.

(3) A Public Prosecutor, an Assistant Public Prosecutor or a private legal practitioner engaged under this rule shall be entitled to a fee of Rs. 25 for every day on which he is engaged in assisting the Advocate-General; and if he comes from outside Nagpur to travelling allowance and daily allowance admissible under rule 34 or rule 49, as the case may be.

#### G.—CASES BEFORE FINANCIAL COMMISSIONER AND CHIEF REVENUE AUTHORITY

**95. Procedure in cases before the Financial Commissioner or Chief Revenue Authority.**—If in a case before the Financial Commissioner or any Chief Revenue Authority of the Province representation of Government is considered necessary, the Secretary to Government in the department concerned shall send a requisition for the services of the Advocate-General together with a power of attorney signed by him and all papers connected with the case to the Legal Department for issuing instructions to the Advocate-General to appear in the case.

#### CHAPTER VIII.—PROSECUTION OF CRIMINAL CASES INSTITUTED AT THE INSTANCE OF DEPARTMENTAL OFFICERS

**96. Scope of the chapter.**—The rules in this chapter relate to departmental prosecutions, *i.e.*, criminal cases instituted at the instance of a Government officer relating to acts of which he has knowledge in his official capacity. Its contents are intended mainly to help officers who have no experience of the procedure followed in the institution and conduct of cases in criminal Courts.

**97. Expediency of consulting District Magistrate in all cases.**—Before launching a prosecution a Government officer should consult the District Magistrate informally regarding

the procedure to be adopted, unless the case is of a kind which is frequently launched by the department to which such officer belongs and the procedure is familiar to him. In all cases of doubt the District Magistrate should be consulted.

**98. Report to police in cognizable cases.**—When the offence is cognizable (*i.e.*, one in which column 3 of Schedule II of the Code of Criminal Procedure, 1898, shows that the police may arrest without warrant), there is no difficulty. A report should be sent, giving a clear, consecutive and chronological statement of the salient facts, to the nearest police station. All further steps will be taken by the police, but the officer making the report must render all assistance in his power.

**99. District Magistrate to be consulted in non-cognizable cases.**—When the offence is non-cognizable (*i.e.*, one in which column 3 of Schedule II of the Code of Criminal Procedure, 1898, shows that the police may not arrest without warrant) and is of a kind not familiar to the department of the officer instituting the prosecution, the District Magistrate should always be consulted as certain formalities may be required in the institution of the case to ensure that the prosecution is legal. These formalities are set out in sub-section (1) (a) of section 195 and in section 197 of the Code of Criminal Procedure, 1898.

**100. Complaint in cases not requiring sanction of Government.**—(1) When the case does not fall within the scope of section 197 of the Code of Criminal Procedure, 1898, the officer instituting the prosecution should send a written complaint to the Magistrate having jurisdiction.

(2) The complaint should give a clear, consecutive and chronological statement of the salient facts.

(3) If the case falls within the scope of sub-section (1) (a) of section 195 of the Code, the complaint should contain a statement that, with reference to that section, the complainant is the public servant concerned.

(4) Under proviso (aa) to section 200 of the Code it is no longer necessary for a public servant to be examined by the Court when he makes a complaint in his official capacity; but if the complaint is intricate, the officer making it should present it personally in order that the Court may have an opportunity of elucidating any obscure point.

**101. Procedure in cases requiring sanction of Government.**—

(1) When the case falls within the scope of section 197 of the Code of Criminal Procedure, 1898, *i.e.*, is against a public servant who is not removable from his office save by or with the sanction of Government or some higher authority and relates to an act done by him while acting in his official capacity, no prosecution can be instituted without the previous sanction of Government.

(2) The departmental authorities should consult the District Magistrate and submit a complete report through the head of the department concerned to Government. The further steps to be taken will be indicated in Government's orders.

**102. Appointment of prosecutor in simple cases.**—In simple cases of departmental prosecutions, for which the police are not responsible, the officer laying the complaint is responsible for the proper prosecution of the case. This should ordinarily be done by appointing a departmental officer or subordinate familiar with the facts of the case, to be prosecutor. Such prosecutor must ask for the Court's permission to appear under section 495 of the Code of Criminal Procedure, 1898.

**103. Engagement of Public Prosecutor in complicated cases.**—When the case is a complicated one, the officer instituting it should approach the District Magistrate with a view to the engagement of the Public Prosecutor.

**104. District Magistrate to assist railway authorities.**—When prosecutions are instituted by a railway company, the District Magistrate should give the officers of the company any advice they may require regarding preliminary formalities, and should put them into communication with the Public Prosecutor, or other suitable legal practitioner, if a prosecuting counsel is required.

**105. Intimation to railway or departmental officers of the filing of appeal.**—When the District Magistrate receives notice of an appeal against a conviction in a prosecution by a departmental officer or by a railway company, he should inform the department or railway officer concerned.

**106. Procedure in cases involving loss mentioned in rule 56-II (b) of Financial Rules.**—When a prosecution against a Government servant is or is likely to be necessary in connection with the losses mentioned in rule 56 (II) (b) of the Financial Rules, Volume I, the following procedure shall be followed by the officer of the department concerned :—

- (a) The officer of the department concerned shall follow the procedure laid down in the said rule 56-II (b) in making reports of losses to the competent authority.
- (b) As soon as a reasonable suspicion exists that a criminal offence has been committed, the senior officer of the department concerned present in the station shall report to the District Magistrate and ask for a regular police investigation under the Code of Criminal Procedure, 1898.
- (c) If the District Magistrate agrees that an investigation may be made, the senior officer of the department concerned present in the station should (i) request the District Magistrate to arrange for the investigation to proceed from day to day, (ii) see that all witnesses and documents are made available to the investigating officer and (iii) associate with the investigating officer an officer of the department who is not personally concerned with the irregularity leading up to the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred.

- (d) When the investigation is completed an officer of the department (accompanied by the officer who attended the investigation) shall be made available for conferences with the authority who will decide whether a prosecution should be instituted. If it is decided not to prosecute, the case shall be reported through the usual channel to Government for orders.
- (e) If it is decided to prosecute, the departmental representative should ascertain from the prosecuting officer whether, having regard to the engagements of the prosecuting staff and the state of work in the Court which would ordinarily hear the case, it is necessary to move the District Magistrate to make special arrangements for a speedy trial, and should request the prosecuting officer to make any application that he may think necessary.
- (f) When the case is put into Court by the police, the senior officer of the department concerned present in the station should see that all witnesses serving in the department and all documentary evidence in the control of the department, are punctually produced, and should also appoint an officer of the department (preferably the officer who attended the investigation) to attend the proceedings in Court and assist the prosecuting staff.
- (g) If any prosecution results in the discharge or acquittal of any person, or in the imposition of sentences which appear to be inadequate, the senior officer of the department concerned should at once consult the District Magistrate as to the advisability of instituting further proceedings in revision or appeal, as the case may be, and if the District Magistrate is of opinion that further proceedings are necessary, should request him to proceed as he would in any other case.
- (h) The senior officer of the department concerned present in the station should see that, in addition to the reports required under clauses (a), (b) and (d) above, prompt reports are submitted to Government through the usual channel regarding—
- (i) the commencement of a police investigation;
  - (ii) the decision to prosecute in any particular case;
  - (iii) the result of any prosecution;
  - (iv) the decision to proceed further in revision or appeal in any case;
  - (v) the result of any proceedings in revision or appeal.
- (i) Notwithstanding anything contained in clauses (b) to (h), the senior officer of the department concerned present in the station may, if he thinks fit, refer any matter through the usual channel for the orders of Government before taking action.

## CHAPTER IX.—ASSISTANCE TO GOVERNMENT SERVANTS IN CRIMINAL CASES INSTITUTED BY OR AGAINST THEM

**107. Scope of the chapter.**—The rules in this chapter provide for assistance to be given to Government servants in instituting criminal cases for defamation and in defending criminal cases instituted against them in relation to acts done by them in their official capacity. There are separate rules made under the Police Act, 1861 (V of 1861), for the defence of police officers in cases instituted against them and these rules are contained in Section VI of Chapter VIII of Part II of Police Regulations, 1937.

**108. Assistance to Government servants in cases of defamation.**—It sometimes happens that a Government servant, in defence of his own reputation, has to file a criminal case under section 500 of the Indian Penal Code, in respect of defamatory matter uttered or published against him in his capacity as public servant. Government is always prepared to assist Government servants in prosecuting genuine cases of this kind and to engage the Public Prosecutor to conduct the prosecution. Application for his services may be made to Government through the District Magistrate or head of the department concerned.

**109. Defence of Government servants.**—(1) When a prosecution is instituted against a Government servant on account of an act done by him in his official capacity, Government is always prepared to assist him in a genuine defence.

(2) When Government declines to defend a Government servant, he may, on his own responsibility and at his own expense, take such measures as he considers necessary, provided that they will not interfere with the performance of his official duties. In such a case if the final decision is in favour of the Government servant, Government will ordinarily reimburse such expenses as it may consider to be reasonable.

(3) A Government servant, against whom a prosecution is instituted, shall at once send an intimation regarding it to the head of his department and his immediate superior officer, if any.

**110. (1) Submission of report to head of department.**—When a prosecution is instituted against a Government servant, he shall report to the head of his department through his superior officer, if any, all the facts and circumstances of the case. On receipt of the report the head of the department shall make enquiries, if necessary, and shall report the facts with his recommendations to Government for orders.

(2) If it appears to the superior officer that there is no time to obtain the orders of Government, he may on his own responsibility decide whether the defence of the Government servant should be undertaken by Government and pass orders

in anticipation of its sanction. The matter shall subsequently be reported to Government for confirmation of the orders, stating the course the superior officer decided to adopt and the reasons therefor.

**(3) Procedure when section 197, Criminal Procedure Code, applies.**—When a prosecution is instituted against a Government servant who is not removable from his office save by or with the sanction of Government or some higher authority as required by section 197 of the Code of Criminal Procedure, 1898, and such sanction has not been obtained, the Court should be requested to reject the complaint for want of the sanction.

**111. Engagement of counsel.**—When the defence of a Government servant is sanctioned by Government, the services of the Public Prosecutor may be engaged if this is considered desirable. Where the services of the Public Prosecutor are not engaged, a private legal practitioner may be engaged. The fee payable to the Public Prosecutor or private legal practitioner for the whole case shall be such amount, not exceeding Rs. 100, as the District Magistrate may fix according to the importance of the case. If it is proposed to fix the fee at a figure higher than Rs. 100, sanction of Government shall be obtained. The said fee and any incidental charges, such as court-fee and diet money of witnesses, shall be borne by Government. In petty cases, the appearance of the Government servant himself should ordinarily suffice.

**112. (1) Procedure when decision is in favour of Government servant.**—If the case, the defence of which was sanctioned by Government, is decided in favour of the Government servant and if any compensation, costs or damages are awarded to him, the amount of expenses paid by Government shall be refunded by him up to the limit of such compensation, costs or damages.

**(2) Procedure when decision is against Government servant.**—If the case is decided against the Government servant, the question whether an appeal should be filed at the expense of Government or whether the damages awarded to the complainant or the fine imposed should be paid by Government shall be decided by Government either on the application of the officer concerned or on the representation of his superior officer. The application or representation shall be submitted to Government through the head of the department. Both officers should give their own considered opinion on it.

**113. Duty of counsel when proceedings are likely to prolong.**—Whenever it appears to the Public Prosecutor or the private legal practitioner appearing on behalf of the Government servant that the proceedings in the Court are likely to be prolonged, and to interfere with the discharge of the Government servant's public duties or are likely to harass him, the Public Prosecutor or the private legal practitioner should request the Court to deal with the proceedings with the utmost possible expedition.

## CHAPTER X.—DEFENCE OF PAUPER ACCUSED

**114. Assistance to pauper accused.**—(1) Where it appears that an accused cannot afford to engage counsel for himself, counsel shall be engaged at Government expense for the defence in the following cases :—

- (i) when the accused is produced before a Magistrate for inquiry into a capital charge in accordance with the provisions of Chapter XVIII of the Code of Criminal Procedure, 1898, provided that accused has made a confession before the commencement of the inquiry;
- (ii) when the accused is committed for trial before the Court of Session on a capital charge;
- (iii) when the accused has been sentenced to death by the Court of Session and the proceedings are submitted to the High Court for confirmation under section 374 of the said Code;
- (iv) when the accused has been called upon by the High Court to show cause why a lesser sentence should not be enhanced to a sentence of death under section 439 of the said Code;
- (v) when a case has been submitted to the High Court under section 307 of the said Code.

(2) If there are several accused in a case and if it appears from the defences disclosed that it is undesirable to entrust their defences to the same counsel, as many may be engaged as appears to be necessary.

**115. Responsibility for decision to give assistance.**—(1) The decision as to the ability of the accused to engage counsel for himself shall in all cases rest with the District Magistrate, who will ordinarily be guided by the opinion of the Magistrate making the inquiry into the capital charge or the Magistrate who committed the case.

(2) The District Magistrate shall be requested to take action under this rule and under rule 116—

- (i) by the Magistrate making the inquiry into the capital charge;
- (ii) by the committing Magistrate when the case is committed to the Court of Session;
- (iii) by the Public Prosecutor when a capital sentence is submitted to the High Court for confirmation;
- (iv) by the Registrar of the High Court when notice is issued to an accused to show cause why a lesser sentence should not be enhanced to a sentence of death, and
- (v) by the Sessions Judge, when a case has been submitted to the High Court under section 307 of the Code of Criminal Procedure, 1898.



(3) When the District Magistrate decides that an accused person can afford to engage counsel for himself, he shall communicate his decision, with the grounds thereof, to the committing Magistrate or the Court of Session or the High Court, as the case may be, and it shall be open to the Court of Session or the High Court to disagree with the District Magistrate, and to request him or the Legal Department, as the case may be, to take the necessary steps to have the accused represented by counsel.

**116. Selection of practitioner.**—(1) When counsel is to appear before the Court of the committing Magistrate or the Court of Session, the District Magistrate shall select the legal practitioner :

Provided that if in any case a legal practitioner was selected to appear before the Court of the committing Magistrate and the case is committed to the Court of Session, then the same practitioner shall, if available, be also selected to appear before the Court of Session.

(2) When counsel is to appear before the High Court, the District Magistrate shall address the Legal Department for making the necessary arrangements. When addressing the Legal Department, District Magistrates should bear in mind the provisions of sub-rule (2) of rule 114.

**117. Supply of copies.**—(1) When the counsel is engaged to appear before the Court of Session, he shall be supplied forthwith, free of cost, by the office of the Sessions Judge, with a copy of the committing Magistrate's proceedings.

(2) When counsel is engaged to appear before the High Court in a case for the confirmation of a death sentence, or in a case for enhancement of a lesser sentence to a sentence of death, or in a case which has been submitted under section 307 of the Code of Criminal Procedure, 1898, he shall be supplied free of cost by the office of the Registrar of the High Court with a copy of the paper book prepared in the case. When more than one counsel is engaged each counsel shall be supplied, free of cost, by the office of the Registrar—

- (i) in a case for confirmation of a death sentence, with a copy of the judgment of the Court of Session, the examination of the accused in the committing Magistrate's Court and the Court of Session, the charge sheet, and the written statement, if any, filed by the accused;
- (ii) in a case for the enhancement of a lesser sentence to a sentence of death, with a copy of the judgment of the Court of Session;
- (iii) in a case submitted under section 307 of the Code of Criminal Procedure, 1898, with a copy of the order of reference, the examination of the accused in the committing Magistrate's Court and the Court of Session, the charge sheet, and the written statement, if any, filed by the accused.

(3) In order to enable the Legal Department to give timely intimation to the High Court about the engagement of more

than one counsel for the defence of pauper accused in any case, it is essential that the District Magistrate should forward the requisition under rule 116 (2) immediately on receipt of the communication mentioned in clause (iii), clause (iv) or clause (v) of rule 115 (2).

(4) If more than one counsel is to appear before the Court of Session, intimation in that behalf should be given by the District Magistrate to the office of the Sessions Judge immediately on receipt of the communication mentioned in clause (ii) of rule 112 (2).

## **PART IV.—CONTROL OF GOVERNMENT LITIGATION IN CIVIL COURTS**

### **CHAPTER XI.—SUITS AGAINST GOVERNMENT**

#### **A.—PROCEEDINGS PRIOR TO INSTITUTION OF SUITS**

**118. Legal advice before receipt of notice.**—This chapter relates only to the stages subsequent to the receipt of notice mentioned in rule 119. If a dispute of a civil nature is proceeding, but the claimant has not yet sent such a notice, a departmental officer may obtain legal advice by following the procedure laid down in Chapter IV.

**119. Previous notice of suit against Government.**—Section 80 of the Code of Civil Procedure, 1908, provides that no suit shall be instituted against the Crown, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

- (a) in the case of a suit against the Central Government, a Secretary to that Government;
- (b) in the case of a suit against the Crown Representative, the Political Secretary;
- (c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the district; and
- (d) in the case of suit against the Secretary of State, a Secretary to the Central Government, the Political Secretary and a Secretary to the Provincial Government of the Province where the suit is instituted,

and, in the case of a suit against a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

**120. Procedure when suit filed without due notice.**—When a suit is brought against the Crown or a public officer without the notice required by section 80 of the Code of Civil Procedure, 1908 (V of 1908), having been duly served, or before the expiry of the period of two months from the date of service of the notice, the Deputy Commissioner should move the Court to dismiss the suit on the ground that it has been instituted in contravention of the provisions of that section.

**121. Procedure when notice relates to suit against Central Government or Secretary of State.**—(1) When a notice is addressed to a Deputy Commissioner or Secretary to Government making a claim against any department or officer of the Central Government, or against the Crown Representative, the officer receiving it shall inform the party concerned that the notice is not in accordance with the provisions of section 80 of the Code of Civil Procedure, 1908, and shall intimate the action taken to the Legal Department.

(2) In all cases where a Secretary to Government receives notice of a suit under clause (d) of section 80 of the Code of Civil Procedure, 1908, against the Secretary of State, the Secretary shall communicate to the Central Government, as soon as possible after the receipt of the notice, the views of the Provincial Government as to whether the subject matter of the suit falls within the executive authority of the Central Government, or the Crown Representative or the Provincial Government, and as to the arrangements that should be made for defending the suit, if brought.

(Government of India, Home Department, letter No. F.-204-37—Judicial dated the 26th May 1937.)

**122. Notice to be endorsed and copy sent to Legal Department.**—Immediately on receipt of a notice of a claim in which Government is primarily concerned, the officer on whom it is served should endorse thereon the date and manner of its delivery and forward a certified copy of the notice so endorsed—

(a) to the Legal Department for information, and

(b) to the officer in charge of the case for necessary action.

*Explanation.*—For the purposes of this rule and other rules in this chapter, the officer in charge means the executive officer who is primarily concerned with the case and is cognizant of the facts of the case, e.g., in the Public Works Department he is ordinarily the Executive Engineer, in the Forest Department, the Divisional Forest Officer. In a case not falling in a definite recognized department, he is ordinarily the Deputy Commissioner :

Provided that Government may, having regard to the character of the suit as disclosed by the notice, appoint the head or any other officer of the department concerned to be the officer in charge for the purpose of that suit.

**123. Transfer of notices to executive officers concerned.**—The officer in charge of the case shall be responsible for the conduct of the negotiations, for the preparation of the report in the case, and for the instruction of the counsel engaged in the case. He shall be subject to the control of his administrative superior. He may appoint a gazetted subordinate to assist him in the discharge of his duties in connection with the case but shall himself remain responsible for their proper discharge.

**124. Conduct of negotiations.**—(1) On receiving the notice, the officer in charge of the case should forthwith make a careful inquiry into the case and, if he finds that there are *prima facie* reasonable grounds for the claim, should open negotiations for a compromise with the claimant.

(2) In conducting these negotiations the officer in charge should bear in mind that it is Government's policy to deal always in a spirit of fairness, and that it does not desire to do any injustice by a rigid insistence on its legal rights. On the other hand, Government can give no encouragement to extortionate demands, and when a claimant takes up an unreasonable attitude, negotiations should be broken off at once.

(3) During negotiations no written communication should be made by the officer in charge relating to the merits of the dispute, or admitting Government's liability, except under the instructions of Government. Negotiations should, as far as may be convenient, be carried on verbally, and on the understanding that any arrangement agreed upon will be subject to the sanction of Government. All communications and negotiations should be "without prejudice" to the pleadings of Government in the event of a suit being filed.

**125. Reference to arbitration.**—(1) In a case in which the facts are complicated and of a technical character, the officer in charge should ascertain from the claimant whether, if Government agrees, he himself will agree, to have the dispute referred to arbitration in accordance with Chapter II of the Arbitration Act, 1940. The provisions of that chapter and the First Schedule of that Act should be explained and the advantages of its cheapness and speedy decision of arbitration proceedings should be pointed out to the claimant. If he agrees, the proposal in detail should be submitted for orders of Government. If Government agrees to the proposal to refer the dispute to arbitration, necessary instructions will be conveyed to the officer in charge for giving effect to the proposal when orders are communicated to him under rule 128.

(2) When any dispute has been referred to arbitration and the sole arbitrator or one of the arbitrators is a Government officer, he shall not refer any point in dispute to his departmental superior or to the Legal Remembrancer for orders or for opinion. He should act in accordance with the provisions of the said Act and in giving his decision should take cognizance only of the evidence and arguments properly placed before him by the parties. Disregard of this rule may render the award invalid.

**126. Reports to be made promptly.**—A full report on the case shall be made by the officer in charge through his administrative superior to the head of the department for being forwarded to Government for orders. A copy of the notice should be attached to the report and the report should reach Government at least fifteen days before the expiry of the two months' notice referred to in rule 119.

**127. Contents of reports.**—The report should contain—

(a) a clear chronological statement of the facts and circumstances of the case, in narrative form, with references to the documentary evidence on both sides and indications of the oral evidence on both sides;

C.—APPLICATIONS UNDER SECTION 14 (1) OF THE LOCAL FUND  
AUDIT ACT, 1933 (IX OF 1933)

138. **Procedure in surcharge cases.**—(1) When an application is made to the District Judge under clause (a) of sub-section (1) of section 14 of the Central Provinces Local Fund Audit Act, 1933 (IX of 1933), a notice is issued by the Judge to the Commissioner to show cause why the application should not be allowed.

(2) The notice above referred to will be sent by the District Judge in triplicate one copy of which will be returned by the Commissioner to the District Judge in acknowledgment of the notice and one sent to the Deputy Commissioner of the district concerned for information. The Commissioner need not appear before the District Judge personally unless directed by him to do so. The Commissioner will decide whether the Public Prosecutor should appear for him before the District Judge. If he decides that the Public Prosecutor should appear for him, he will instruct the Public Prosecutor. If he decides that the Public Prosecutor need not appear, he will prepare a report and forward it to the District Judge.

(3) As soon as the final order is passed by the District Judge, he will send copies of the order as follows:—

one copy to the Commissioner;

one copy to the Finance Department; and

one copy to the Deputy Commissioner who will forward it to the Examiner of Local Fund Accounts.

(4) If the order of the Commissioner is set aside by the District Judge, the Commissioner will consider the advisability of filing an appeal in the High Court under section 14 (3) of the said Act, after consulting the Public Prosecutor, if necessary. If the Commissioner considers that an appeal should be filed, he should submit a report, through the Finance Department, to the Legal Department giving his reasons for recommending an appeal. The report should be accompanied by a draft of the proposed memorandum of appeal, which should be drawn up by the Public Prosecutor, if he was engaged in the case, and should be despatched so as to reach the Legal Department within one month from the date of the District Judge's order.

(5) If an appeal is filed in the High Court by the person aggrieved by the order of the District Judge and the Commissioner receives a notice thereof from the High Court, he should at once report the fact to the Legal Department, through the Finance Department, stating whether the Advocate General should be asked to appear for the Commissioner in the High Court.

(6) The Legal Department will direct the Advocate-General to take necessary action on receipt of the Commissioner's report from the Finance Department.

(7) The Provincial Government will bear the costs that may be incurred by or on behalf of the Commissioner in respect of an

application made to the District Judge or the Provincial Government under section 14 (1) or in respect of an appeal filed in the High Court under section 14 (3) of the Local Fund Audit Act, 1933 (IX of 1933). In the event of the costs being awarded by the District Judge or the High Court in favour of the Commissioner, the Commissioner will take steps to recover the costs by making an application under rule 11 of Order XXI of the Code of Civil Procedure, 1908, if necessary, and the amount recovered shall be credited to the head "XXI—Administration of Justice—Miscellaneous". In the event of costs being awarded against the Commissioner, the Deputy Commissioner should arrange to pay the costs to the person concerned as early as possible.

## CHAPTER XII.—SUITS INSTITUTED BY GOVERNMENT

**139. Sanction to institution of suit by Government.**—No suit on behalf of Government shall be instituted without the sanction of Government.

**140. Desirability of amicable settlement.**—(1) The institution of a suit on behalf of Government should not be recommended until the proposed defendant has been given ample opportunity to state his views and come to an amicable settlement.

(2) While it is the duty of officers of Government to enforce the rights and protect the interests of Government, they should not have recourse to the law Courts until all efforts to effect an amicable settlement have failed.

**141. Preliminary departmental inquiry.**—Before the institution of a suit is recommended the case for Government should first be enquired into departmentally and evidence secured on all points which are likely to be contested.

**142. Report when suit recommended.**—Whenever it appears to any officer of Government that a suit should be instituted on behalf of Government, he shall submit a complete report, through the head of the department for the orders of Government.

**143. Contents of report.**—The report should contain the following particulars:—

- (a) a clear chronological statement of the facts and circumstances which, in his opinion, render the institution of the suit necessary, and precisely when and where they each occurred;
- (b) a clear statement of all the evidence both oral and documentary, by which the claim can be supported;
- (c) copies of the written documents, if any, upon which the claim is based, and any other papers, the inspection of which is considered necessary for the elucidation of the case;

- (d) the pleas or objections, if any, which have been urged by the proposed defendant against the claim;
- (e) the evidence, both oral and documentary, which, so far as is known, the proposed defendant will be able and is likely to adduce in his defence; and
- (f) any other material facts, *e.g.*, the circumstances of the proposed defendant, any special reasons for the institution of the suit apart from the amount claimed, whether its decision will affect other claims, and the like.

**144. Orders of Government on the report.**—Orders of Government on the report will be obtained by the Legal Department through the Secretary to Government concerned with the subject matter of the proposed suit. The orders will be communicated by the Legal Department to the head of the department together with any instructions which may be considered necessary and the head of the department will transmit them to the officer in charge of the suit to be specified in those orders. The notes recorded by the Legal Department in the case should be treated as confidential.

**145. Engagement of Public Prosecutor.**—(1) If Government decides to institute the suit, the officer in charge should move the Deputy Commissioner to engage the Public Prosecutor to appear on behalf of Government.

(2) In difficult cases the Public Prosecutor may be engaged to help in the departmental inquiry under rule 141 or in the preparation of the report under rule 143.

**146. Submission of draft plaint.**—Before the suit is instituted a draft of the plaint, with a list of the documents to be filed and copies of these documents, should be submitted, through the head of the department, to Government; and instructions should be awaited.

**147. Officer in charge to sign and verify plaint.**—The officer in charge shall sign and verify the plaint and also discharge the other functions described in rule 131 in regard to the suit. Any processes issued to the Crown in the suit shall be received by the Deputy Commissioner as provided in rule 129.

**148. Further procedure.**—After the suit is instituted the provisions of rules 135, 136 and 137 should be followed, as far as they are applicable.

## CHAPTER XIII

### A.—APPEALS AND REVISIONS

**149. Procedure when decision adverse.**—When a suit has been decided, wholly or in part, adversely to Government, the officer in charge of the suit should at once consider the advisability of filing an appeal and should consult the Public Prosecutor if he was engaged in the case.

**150. Report when appeal recommended.**—(1) If he considers that an appeal should be filed, he shall submit a report, through the head of the department, for the orders of Government, giving his reasons for recommending an appeal.

(2) The report shall be accompanied by—

- (i) a copy of the judgment and decree against which it is proposed to appeal; and
- (ii) a draft of the proposed memorandum of appeal, which shall be drawn up by the Public Prosecutor, if he was engaged in the case.

(3) The report must be despatched so as to reach Government within fifteen days after the date of the decree in cases where the appeal lies to the District Court, and within one month where the appeal lies to the High Court:

Provided that, in a case where the appeal lies to the District Court, if there is a risk of appeal becoming barred by time, the officer in charge may, on his own responsibility, after consultation with the Public Prosecutor, file the appeal and immediately report the action taken to Government.

**151. Orders of Government on the report.**—Orders of Government on the report will be obtained by the Legal Department through the Secretary to Government concerned with the subject matter of the proposed appeal. The orders will be communicated to the officer in charge by the Legal Department together with any instructions which may be necessary. The notes recorded by the Legal Department in the case should be treated as confidential.

**152. Departmental assistance to counsel conducting an appeal.**—The officer in charge shall render all possible assistance to the counsel appearing for Government in an appeal; and he should himself be present at the hearing of a complicated case, or should arrange for the attendance of an officer competent to advise counsel on the facts and on technical matters.

**153. Appeals against decisions in favour of Government.**—

(1) When an appeal is made against any decision given in favour of Government, the officer in charge of the case shall take such measures as may be necessary to uphold the decision.

(2) Ordinarily, it should not be necessary to apply for instructions to the Legal Department, but a reference may be made in cases of doubt or difficulty, or when new pleas are raised:

Provided that in important cases the Public Prosecutor shall report his proposals for the defence of the appeal to the Legal Department for approval.

(3) A notice of an appeal filed in the High Court shall be forwarded to the Advocate-General through the Legal Department.



**154. Second appeals and revisions.**—Rules 149 to 153 shall be applicable to appeals against appellate judgments and, *mutatis mutandis*, to applications for revision.

**155. Responsibility of Public Prosecutors for timely action in certain cases.**—When the Public Prosecutor or the Assistant Public Prosecutor has been engaged to represent Government in any civil proceeding, he shall be responsible that timely action is taken where revision of an order is required and in appeals coming within the scope of section 97 of the Code of Civil Procedure, 1908 (V of 1908).

#### B.—APPEALS TO HIS MAJESTY IN COUNCIL

**156. Application for permission to appeal how to be dealt with.**—Applications under Order XLV of the Code of Civil Procedure for permission to appeal to His Majesty in Council, whether on behalf of or against Government shall be dealt with generally under the same rules as are applicable to appeals to the High Court.

**157. Selection of exhibits for transcript of record.**—When the High Court has granted a certificate that a case is fit one for such appeal, the Advocate-General shall take steps for selecting the exhibits to be included in the transcript of the record.

**158. Preliminary instructions to the Legal Adviser to the Secretary of State.**—He shall at the same time forward to Government, for communication to the Legal Adviser to the Secretary of State preliminary instructions stating generally the nature and importance of the appeal and any suggestions with regard to the retainer of any particular counsel before the Privy Council.

**159. Preparation of transcript of record.**—When the High Court has declared the appeal admitted under Order XLV, rule 8, of the Code of Civil Procedure, the Advocate-General shall give his careful attention to the preparation of the transcript of the record and see that it contains copies of all the documents necessary on behalf of Government and that it is conveniently arranged and indexed.

**160. Preparation of statement of cases.**—(1) The Advocate-General shall also immediately prepare a statement (i) embodying the facts of the case, (ii) explaining the reasons on which the further prosecution of the suit is recommended, (iii) setting out the principal points insisted upon for the Government in the Courts of the country, (iv) adding such observations upon the past conduct of the case and upon the judgments of the Courts in this country as will conduce to an understanding and proper representation of the Government case at the hearing of the appeal.

(2) The above statement shall be signed by the Advocate-General, shall contain his opinion as to the precise grounds on which the appeal should be argued and shall be forwarded to Government.

**161. Statement to be printed.**—(1) The statement together with the opinion of the Advocate-General shall then be printed without any delay under the superintendence of the Advocate-General so as to be ready for transmission to the Secretary of State, if possible for or at least at the same time that the transcript of the record is likely to be transmitted by the High Court to the Privy Council.

(2) As soon as the statement is printed, 12 copies of the same shall be retained in the Legal Department for the record of Government and 5 copies shall be transmitted to the Secretary of State with a view to the Legal Adviser of the Secretary of State being duly instructed.

**162. Date of transmission of record to be communicated to Government.**—The Advocate-General shall communicate to the Legal Department the date on which the transcript of the record is transmitted by the High Court to the Privy Council, and shall also submit 12 printed copies of the transcript for the record of Government. If the transcript of the record is not printed in India, the Advocate-General shall merely inform Government the date of the transmission of the record by the High Court.

#### C.—APPEALS TO THE FEDERAL COURT

**163. Advocate-General's duty in respect of certificate under section 205 (1) of the Government of India Act.**—In every case before the High Court in which Government is involved, the Advocate-General should see that in the event of a question arising as to the interpretation of the Government of India Act, 1935, or of any Order in Council made thereunder, the High Court judgment states whether or not it withholds a certificate under section 205 (1) of the Act.

**164. Procedure to be followed, regarding an appeal to the Federal Court.**—(1) When it is decided by the Provincial Government to appeal to the Federal Court from any judgment, decree or final order of the High Court, the Advocate-General shall, if necessary, apply to the High Court for grant of a certificate as required by section 205 (1) of the Government of India Act, 1935.

(2) After a certificate is granted by the High Court, the Advocate-General shall, without delay, take all necessary steps to have the record prepared in the High Court in accordance with the Federal Court Rules and the Rules of the High Court and transmitted to the Registrar of the Federal Court. He shall give preliminary instructions to the Agent at Delhi and see that a petition of appeal is lodged in the Federal Court in time.

(3) The Advocate-General shall, with the previous sanction of the Provincial Government, engage an Agent at Delhi and may, with the like sanction, engage an Advocate to assist him in the conduct of appeals, suits or other proceedings in the Federal Court and also in the performance of his duties under this rule as well as under the Federal Court Rules.

(4) The Agent and the Advocate referred to in sub-rule (3) shall be paid such fees as may be determined by the Provincial Government.

(5) Where there is sufficient time, the Advocate-General shall consult the Secretary to Government in the Legal Department in regard to the statements to be made or filed in the Federal Court.

(6) The Legal Department shall give all such assistance as the Advocate-General may require and shall take steps to comply with the final decree or order of the Federal Court.

## CHAPTER XIV.—EXECUTION OF DECREES AND RECOVERY OF COSTS

**165. Satisfaction of decrees against Government.**—Whenever it has been determined not to contest further a decision which is either wholly or partly adverse to Government, the officer in charge of the suit shall at once arrange with the Deputy Commissioner for the payment into the Court, whose duty it is to execute the decree, of all money payable under the decree, care being taken that the decree is fully satisfied within the time fixed for that purpose under section 82 of the Code of Civil Procedure, 1908 (V of 1908).

**166. Execution of decrees in favour of Government.**—Immediately on a decree being given in favour of Government, the officer in charge of the case shall at once take any steps necessary to execute the decree, and shall make the necessary application under rule 11 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908).

**167. Deputy Commissioner to assist officer in charge.**—The Deputy Commissioner shall render all possible help to the officer in charge in the execution of decrees, and in particular shall help such officer to trace out the property of recalcitrant judgment-debtors, and see that such property is not fraudulently concealed or alienated.

**168. Stay of execution on appeal.**—When execution of a decree has been stayed pending the disposal of an appeal, under the provisions of rule 5 of Order XLI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), the officer in charge shall assure himself that the security offered is sufficient. If it is insufficient, he should apply to the Court for execution.

**169. Payment out of Court.**—Any sum due to Government under a decree may, if this course is feasible, be recovered otherwise than through the agency of the Court, but the officer in charge is required, under rule 2 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), to certify every such recovery to the Court.

**170. Responsibility of Legal Department.**—The Legal Department will be responsible that proper action is taken to recover all moneys due to Government under decrees and orders of civil Courts in all cases. In order to enable that

department to discharge this function adequately the officer in charge will, from time to time, keep it informed, through the head of the department, of the steps taken under rules 166 to 169.

**171. Recovery of court-fees in pauper suits.**—(1) The amount of court-fees and other costs payable to the Government in pauper suits should be recovered by proceedings in execution of decrees.

(2) Pauper suits are instituted without payment of court-fees, and rules 10 and 11 of Order XXXIII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), provide for the recovery of the amount of the fees which should have been paid if the plaintiff had not been permitted to sue as a pauper.

(3) In cases governed by rule 10 of Order XXXIII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), it is not necessary for Government to bring a separate suit, but the amount of the court-fees can be realized from the property, the subject matter of the suit, by proceedings in execution.

(4) Paragraph 176 in Chapter 9 of Part I of the High Court's Rules and Orders (Civil) requires that copies of all decrees, original and appellate, passed in pauper suits shall be transmitted without delay to the Deputy Commissioner of the district in which the Court passing the original decree is situated. This provision enables the Deputy Commissioner to recover the amount of court-fees payable to Government.

(5) It may be noted that the Deputy Commissioner is appointed to be Government Pleader for his district for discharging the functions of "Government Pleader" under rules 6 and 9 of Order XXXIII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908). These functions are connected with pauper suits. (Notifications Nos. 1131-1164-XX, dated the 28th September 1940, and 1296-1598-XX, dated the 26th November 1940.)

## CHAPTER XV.—SUITS BY OR AGAINST GOVERNMENT SERVANTS

**172. Suits by Government servants.**—It may be expedient that a Government servant should institute a civil suit in his own name in order to vindicate himself as a Government servant. In such cases if the Government servant wishes the help of Government, he should follow the procedure laid down in rules 141 to 146 for suits instituted by Government.

**173. Suits against Government servants.**—(1) The procedure and principles of rules 109 to 113 shall be applicable to civil suits instituted against Government servants.

(2) The same procedure and principles shall be applicable to civil suits instituted against Government servants who have been appointed to municipal committees under sub-section (6) of section 18-A or sub-section (3) (b) of section 57 of the Central Provinces Municipalities Act, 1922, or to district councils under sub-section (3) (b) of section 64 of the Central Provinces Local Self-Government Act, 1920, in respect of acts done by them in virtue of such appointment.

**174. (1) Notice in suits against Government servants.**—No suit may be instituted against a Government servant in respect of any act done by him in his official capacity until the expiration of two months next after notice has been delivered to him or left at his office.

**(2) Dismissal of suits brought without notice.**—If any such suit is brought against a Government servant without the proper notice, he should at once represent the matter to the Court and ask that the suit should be dismissed under section 80 of the Code of Civil Procedure, 1908 (V of 1908).

**NOTE.**—In suits by or against Government servants, the Government servant concerned will be the officer in charge.

**175. Separate rules for police officers.**—Rules 173 and 174 do not apply to police officers. There are separate rules made under the Police Act for the defence of police officers in cases instituted against them and these rules are contained in section VI of Chapter VIII of Part II of Police Regulations, 1937.

## CHAPTER XVI.—SUITS RELATING TO PUBLIC MATTERS

**176. Officers who may institute or consent to the institution of suits relating to public matters.**—(1) Under section 91 of the Code of Civil Procedure, 1908 (V of 1908), a suit for relief against nuisance may be instituted by the Advocate-General, or by two or more persons who have obtained his consent in writing.

(2) Under section 92 of that Code, a suit relating to a breach of a trust created for public purposes of a charitable or religious nature, or asking for the direction of the Court for the administration of such a trust, may be instituted by the Advocate-General or by two or more persons interested in the trust who have obtained his consent in writing.

(3) Under section 93 of the Code, the powers conferred by sections 91 and 92 on the Advocate-General are exercised with the previous sanction of the Provincial Government also by the Deputy Commissioners within their respective districts.

**177. Procedure to be followed when applications are addressed to the Advocate-General.**—When the Advocate-General receives an application for consent to the institution of a suit under section 91 or 92 he may dispose of it or may forward it to the Deputy Commissioner concerned for holding an inquiry on such lines as may be indicated in the forwarding endorsement. On receipt of the proceedings of inquiry, the Advocate-General may, if necessary, hear the parties in person or through their counsel and pass such final order as he may think fit.

**178. Procedure to be followed when applications are addressed to the Deputy Commissioners.**—(1) When a Deputy Commissioner receives an application for consent to the institution of a suit under section 91 or 92 (other than the one received by him for enquiry under rule 177) he should order an enquiry to be made and, in case he is of opinion that consent should be

given, he should forward the papers relating to the enquiry together with a report containing his opinion to the Provincial Government for previous sanction as required by section 93 of the Code of Civil Procedure.

(2) In the case of an application under section 92, the enquiry may, as far as possible, be directed towards the following issues :—

- (i) Does a trust exist for public purposes of a charitable or religious nature?
- (ii) Has there been a breach of such trust?
- (iii) Have the applicants an interest in such trust?
- (iv) Are they fit and proper persons to be entrusted with the conduct of the suit?

(3) In the case of an application under section 91, the enquiry may, as far as possible, be directed towards the following issues :—

- (i) Whether there exists public nuisance and if so, of what nature?
- (ii) Are the applicants fit and proper persons to be entrusted with the conduct of the suit?

(4) The inquiry need not be elaborate and only a *prima facie* case need be made out on each issue by the applicants. The inquiry should not be allowed to develop into a regular trial.

**179. Fresh applications relating to matters disposed of not to be entertained.**—(1) When an application for consent to the institution of a suit under section 91 or section 92 is disposed of by the Advocate-General or Deputy Commissioner, no fresh application relating to the same subject matter should be entertained by either officer.

(2) A copy of an order passed by the Advocate-General dismissing an application under section 91 or 92 of the Code shall be sent for information to the Deputy Commissioner and *vice versa*.

**180. Procedure when suit proposed to be instituted by Government agency.**—(1) When the Deputy Commissioner considers that the circumstances require that a suit relating to a public matter should be filed by himself or the Advocate-General he shall follow the procedure laid down in Chapter XII as if the suit were being instituted on behalf of Government.

(2) In making the report required by rule 143 (a) the Deputy Commissioner shall report specially on the circumstances rendering it expedient that the suit should be instituted by Government agency.

## APPENDIX I.—LIMITATION FOR APPLICATIONS FOR REVISION UNDER CRIMINAL PROCEDURE CODE

*Extract from Chapter 4 of the Rules of the High Court of Judicature at Nagpur.*

\* \* \* \*

14. All petitions for revision made to this Court under section 435 of the Code of Criminal Procedure shall be treated as *prima facie* made without diligence as ought ordinarily to be shown to enable the petitioner to relief in revision if the period from the date of the order of which revision is sought to the date on which the petition is filed in Court excluding the time properly spent in obtaining any copy required to be submitted with the petition, is more than 60 days.

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NOTE.—As regards the nature of the time limit fixed by the above rule, the case in 1940 Nagpur Law Journal 319 (*Nathu vs. Jagannath*) may be seen.

## APPENDIX II.—PROCEDURE REGARDING PAYMENT OF SALARY, FEES AND ALLOWANCES TO LAW OFFICERS

### I.—THE ADVOCATE-GENERAL

1. (a) *Salary*.—The monthly salary of the Advocate-General is drawn on a bill submitted direct to the Accountant-General, Nagpur. The bill should be prepared on the form of salary bill of gazetted officers (Form No. I—1 Accts.).

(b) *Travelling allowance*.—His travelling allowance bill should be prepared in the form prescribed for a gazetted officer and shall be countersigned by the Secretary to Government in the Legal Department.

2. *Fees in Court of Wards cases*.—(1) For opinions given in Court of Wards cases or for Court of Wards cases conducted by the Advocate-General payment of fees is made in accordance with rule 27 of this Manual by the Manager of the Court of Wards by money order or by a cheque as may be convenient.

(2) The fee payable to the Advocate-General under the proviso to rule 27 (1) of this Manual for an appeal to the High Court in any land acquisition proceedings is paid by the local authority or the company concerned by money order or by a cheque as may be convenient.

(3) Delays in payment may be brought to the notice of the Deputy Commissioner concerned who should take suitable action.

### II.—PUBLIC PROSECUTORS AND ASSISTANT PROSECUTORS

3. *Fees in sessions cases*.—A bill on account of fees for sessions cases or criminal appeals before the Court of Session should be prepared monthly and submitted to the Sessions Judge, who will verify the entries, endorse the bill for payment, and return it to the Public Prosecutor for presentation at the district treasury.

4. *Fees in other criminal cases.*—Fees for criminal cases before Courts other than the Court of Session should be drawn on a bill prepared separately in each month and submitted to the District Magistrate, who will verify the entries, endorse the bill for payment, and return it to the Public Prosecutor for presentation at the district treasury.

5. *Fees in special cases.*—A bill for enhanced or special fees or for appearance in a special criminal case, for which Government's sanction has been accorded, should be prepared separately, after the case is finished, with the number and date of the sanctioning letter quoted thereon. The bill should be verified and countersigned by the Court concerned and returned to the Public Prosecutor for presentation at the district treasury duly endorsed for payment.

6. *Fees in civil cases.*—A bill on account of fees for civil suits in any Court except the High Court, should be prepared separately and should be countersigned by the Court concerned and returned to the Public Prosecutor for presentation at the district treasury duly endorsed for payment. The procedure of rule 5 shall be followed in respect of fees in special cases.

7. *Travelling allowance.*—(1) A Public Prosecutor's travelling allowance for a journey performed in connection with a sessions case at a Court not at his own headquarters should be drawn on a bill in the form prescribed for non-gazetted officers (Form No. I—16 Accts.), and submitted direct to the district treasury. The bill should be countersigned by the District and Sessions Judge.

(2) A bill in connection with a journey to assist the Advocate-General or to meet any officer of Government at Nagpur, or elsewhere, shall be countersigned by the Secretary to Government in the Legal Department.

(3) When Government sanctions a special scale of travelling allowance for a Public Prosecutor under rule 37 of this Manual, the bill should be countersigned by the Secretary to Government in the Legal Department.

(4) For journeys performed for appearing in cases in Courts outside their headquarters, the bills of Public Prosecutors should be countersigned by the Sessions Judge of the division or the District Magistrate of the district in which the appearance is made.

8. *Procedure applicable to Assistant Public Prosecutors.*—The procedure laid down in rules 3 to 7 shall also apply to Assistant Public Prosecutors.

NOTE.—In the case of the Public Prosecutor and the Assistant Public Prosecutor, Nagpur, the words "Accountant-General, Nagpur" should be read for "district treasury" in Part II of this Appendix.

### III.—PRIVATE LEGAL PRACTITIONERS

9. *Case fees.*—A private legal practitioner's fees in connection with cases in which he has been engaged to represent Government in the Court of the committing Magistrate, the Court of Session or the High Court shall be drawn by the District



Magistrate, the District and Sessions Judge or the Registrar of the High Court, as the case may be, on an abstract contingent bill and paid to the legal practitioner concerned :

Provided that fees of a private legal practitioner in connection with a case in which he was engaged by the Public Prosecutor or Assistant Public Prosecutor under rule 42, will be drawn and paid to the Public Prosecutor or Assistant Public Prosecutor, as the case may be, as if he himself had appeared in the case. In such cases the private legal practitioner will receive his case fees from the Public Prosecutor or Assistant Public Prosecutor and not from Government.

10. *Fees in cases against pauper accused.*—(1) A private legal practitioner's fees in connection with cases in which he has appeared in the High Court for pauper accused in appeals against acquittal or otherwise shall be drawn by the Registrar, High Court, on an abstract contingent bill and paid to him.

(2) A private legal practitioner's fees in connection with cases in which he has appeared in commitment proceedings or in a sessions trial for the defence of pauper accused shall be drawn by the District Magistrate or the District and Sessions Judge, as the case may be, on an abstract contingent bill and paid to him.

#### IV.—GENERAL

11. *Promptness in submission of bills.*—(1) Delay in submission of bills entails unnecessary trouble to all concerned. A bill should therefore be submitted to the officers concerned monthly or as provided in the foregoing paragraphs. If it is found that a bill has not been submitted within six months from the last date of the month to which it relates, the fact should be brought to the notice of Government.

(2) It is advisable that charges incurred in one year should not be so deferred as to be a charge on the budget of the following year.

12. *Doubtful charges.*—If any bill contains any entry regarding which the officer concerned is doubtful as to the applicability of the prescribed scale, the payment should be withheld and the matter referred to Government for orders.

13. *Account books.*—An account of all receipts and disbursements in connection with his duties should be kept by the Advocate-General and the Public Prosecutors in the ordinary form of a day-book, with such subsidiary ledgers as may be necessary for ascertaining without difficulty the whole of the charges connected with each case. The accounts and other books so maintained shall be produced when required by the District Magistrate or any higher authority.

# INDEX

	Rule or Chapter	Page
<b>Advocate-General—</b>		
—a law officer	.. 3	1
Direct references to—	.. 64, 65	18, 19
Disabilities of —	.. 7	4
Duties of—	.. 6 (2)	2
Emoluments of—	.. 27	9
Employment of counsel in the absence of—	.. 44	13
Employment of counsel to assist the—	.. 45	14
Leave of absence and pension	.. 5	2
Not to leave headquarters without permission	.. 5 (3)	2
Notice in revision cases	.. 86	24
Notice of the date of hearing appeals is issued by the High Court to—	77 (2)	21
Participation in politics	4	1
Procedure of, when High Court desires him to appear	93	26
Public Prosecutor for all cases before the High Court	6 (1)	2
Requisition by District Magistrate for the services of—	78, 79	21, 22
Requisition for the services of— before the Financial Commissioner or Chief Revenue Authority.	95	27
Should not withdraw from prosecution without Government's permission.	8	4
Supply of copies to — in revision cases	.. 88	24
Travelling allowance of—	.. 28	10
<b>Appeal—</b>		
Procedure in, when decision is in favour of Government	153	43
Stay of execution on—	.. 168	46
<b>Appeals against acquittals—</b>		
Applications from private persons regarding—	.. 85	23
Facilities to accused in—	.. 84	22
References regarding—should be prompt	.. 83	22
Responsibility and procedure of the District Magistrate regarding—	80, 81	22
Special reference by Inspector-General of Police regarding—	82	22
Appeals and revisions (civil)	.. Chap. XIII	42
Appeals and revisions (criminal)—		
Combination of—	.. 91	25
<b>Arbitration—</b>		
References to—	.. 125	37
Appeals to Federal Court—		
Procedure, etc., regarding—	.. 163, 164	45
Appeals to Privy Council—		
Procedure, etc. regarding—	.. 156—162	44, 45
<b>Assistant Legal Remembrancer—</b>		
—a law officer	.. 3	1
Allotment of cases to —	.. 21	8
Duties of —	.. 10 (2), (3)	5
—has power to dispose of references relating to byelaws and civil suits.	10 (3)	5
Offices held by—	.. 10 (1)	5
<b>Assistant Public Prosecutor—</b>		
—a law officer	.. 3	1
—advisory and other duties	.. 23	8
Appointment of—	.. 11	6
Confidential reports upon the conduct and ability of —	13 (2)	6
Duties of—in cases under the Local Fund Audit Act	22	8

	Rule or Chapter	Page
<b>Assistant Public Prosecutor—<i>cont.</i></b>		
Leave of absence and pension ..	16	6
— not to be appointed after the age of 60 years ..	14	6
Participation in politics ..	12	6
Power of Deputy Commissioner to engage—instead of Public Prosecutor in civil cases.	43	13
Power of—to engage private legal practitioner in certain cases.	42	13
Probation period and confirmation of— ..	13	6
Remuneration of— ..	37-A	12
—shall not withdraw from prosecution ..	18	7
— term of office ..	14	6
Termination of appointment of— ..	15	6
Termination of appointment ..	15	6
Travelling allowance of— ..	37-A	12
<b>Chief Revenue Authority—</b>		
Appearance of the Advocate-General in cases before the—.	95	27
<b>Civil Procedure Code, 1908, sections 91 and 92—</b>		
— procedure regarding suits under (public matter) ..	Chap. XVI	48
<b>Civil suits—</b>		
— by or against Government servants ..	Chap. XV	47
Conduct of negotiations relating to— ..	124	36
Control of — against Government ..	Chap. XI	35
Departmental enquiry to be held in—instituted by Government.	141	41
Desirability of amicable settlement in— ..	140	41
Engagement of Public Prosecutor in — ..	132	38
Further procedure after institution of— ..	148	42
Instructions from Legal Remembrancer in— ..	136	39
Notices of, legal advice before receipt of— ..	118	35
Notices of—to be sent to the Legal Department ..	122	36
Notices in—to be transferred to executive officers concerned.	123	36
Previous notice under section 80, Civil Procedure Code, is necessary before—are filed.	119	35
Procedure when—are filed without notice ..	120	35
Procedure when—are filed against Central Govern- ment without notice.	121	36
Procedure regarding — instituted by Government ..	Chap. XII	41
Procedure regarding—relating to public matters ..	Chap. XVI	48
Reference to arbitration in— ..	125	37
Report when—recommended to be filed by Govern- ment.	142	41
Report regarding result of— ..	137	39
Sanction to the institution of— ..	139	41
Submission of draft plaints in— ..	146	42
<b>Court-fees—</b>		
Recovery of—in pauper suits ..	171	47
<b>Court of ward cases—</b>		
Engagement of private legal practitioner subject to control of the Commissioner.	43, proviso (ii).	13
<b>Criminal appeals—</b>		
Notice of—in Magistrates' Courts ..	67	19
—when may be combined with application for revision ..	91	25
<b>Criminal cases—</b>		
Appointment of prosecutor in simple— ..	102	29
Complaint in —not requiring sanction of Government ..	100	28
Procedure in — before subordinate Courts ..	Chap. VI	19
Procedure in—proposed to be started by departmental officers.	100—106	28, 29
<b>Criminal Procedure Code, section 197—</b>		
Procedure in cases requiring sanction of Government under—.	101	28
Procedure in reports under— ..	89	25

	Rule or Chapter	Page
<b>Crown—</b>		
Representation of the — in criminal cases and appeals	68, 69	19, 20
ecree(s)—		
Payment out of Court of sums due under a— ..	169	46
Procedure regarding execution of—and recovery of costs.	165—171	46, 47
Responsibility of Legal Department for proper action in respect of execution of—	170	46
Stay of execution of—on appeal ..	168	46
Definitions ..	1	1
<b>Deputy Commissioner—</b>		
—is the officer who receives processes in civil suits against Government.	129	38
Power of—to engage a private legal practitioner in civil cases instead of Public Prosecutor.	43	13
<b>District Magistrate—</b>		
—is the officer to whom notice of the date of hearing appeals is issued.	77	21
—may be consulted by departmental officers in respect of procedure for prosecutions.	97	27
the officer to whom notice of appeal in Court of Session is given.	71	20
—to assist railway authorities, etc. ..	104, 105	29
—to be consulted in non-cognizable cases ..	99	28
<b>Drafting of deeds—</b>		
Advocate-General's duty to assist the Legal Remembrancer in—.	6 (2) (n)	3
References regarding— ..	59	17
<b>Fees—</b>		
—to private legal practitioners in civil cases ..	47	15
—to private legal practitioner in criminal cases ..	46	14
Fixation of—in doubtful cases ..	37, 52	12, 16
—for work outside jurisdiction ..	35	12
—to Public Prosecutors in criminal cases ..	30	10
—to Public Prosecutors in civil cases ..	31	10
—when engagement is subsequently cancelled ..	33, 51	11, 16
Scale of—payable to counsel engaged for pauper accused.	50	15
Special — ..	32	11
<b>Financial Commissioner—</b>		
Appearance of the Advocate-General in the Court of—	95	27
<b>Financial Rules, rule 56-II (b)—</b>		
—procedure in cases involving loss to Government ..	106	29
<b>Government—</b>		
Complaint in cases not requiring sanction of— ..	100	28
Definition of— ..	1	1
Law officers of— ..	3	1
Manner of references to— ..	2	1
Power of—to engage private legal practitioners ..	26	9
Power of—to employ counsel in civil or criminal cases in special circumstances.	45	14
Sanction of—necessary for payment of excess fees ..	36	12
Sanction of — is necessary for payment of excess fees	48	15
<b>Government servant—</b>		
Definition of— ..	1	1
Procedure in criminal cases instituted by or against—	107—113	31, 32
<b>House-building advance cases—</b>		
References regarding—to the Legal Remembrancer..	60	17

	Rule or Chapter	Page
High Court—		
Applications to— for transfer of cases ..	92	26
Definition of— ..	1	1
Procedure in cases before the — ..	Chap. VII	21
Law officers ..	3	1
Procedure regarding payment of salary, fees, etc., to—	Appen. II	50
Legal Remembrancer—		
—a law officer ..	3	1
Demi-official references to— ..	57 (4), 62	17, 18
Duties of— ..	9 (5)	5
—exercises control over other law officers ..	9 (2)	5
Matters on which advice of— may be sought ..	54	16
Matters on which advice of— may not be sought ..	55	16
Method of making references to— for his advice ..	57, 58	17
—to advise certain departments of the Central Government.	63	18
Offices held by— ..	9 (1)	5
Personal discussion with— ..	61	18
Public Prosecutor for all cases in the province except those before the High Court.	9 (3)	5
—recognized agent of the Crown ..	9 (4)	5
References to— regarding house-building advance cases.	60	17
Who may make references to— ..	56	17
Local Fund Audit cases—		
See "Surcharge cases" ..	..	..
Officer in charge—		
Defined ..	122	36
Deputy Commissioner to assist— in the execution of decrees.	167	46
Responsibility of — for production of evidence ..	135	39
—to consider advisability of filing an appeal ..	149	42
—to render assistance to counsel ..	152	43
—to sign and verify plaints, etc. ..	147	42
Transfer of summons to — ..	130	38
Pauper accused—		
Assistance to — in their defence ..	114	33
Facilities to — in appeal against acquittal ..	84	22
Responsibility for decision to give assistance to — ..	115	33
Supply of copies to counsel engaged to defend— ..	117	34
Pauper suits—		
Recovery of court-fees in — ..	171	47
Police—		
Report to — in cognizable cases to be started at the instance of departmental officers.	98	28
Private legal practitioner—		
Case fees to — in civil cases ..	47	15
Case fees to — in criminal cases ..	46	14
—may be engaged by Public Prosecutor or Assistant Public Prosecutor in certain cases.	42	13
Power of Deputy Commissioner to engage— instead of Public Prosecutor in civil cases.	43	13
Scale of fees payable to — for defending pauper accused.	50	15
—to be a local resident ..	41	13
Travelling allowance of — ..	49	15
—when to be employed ..	39, 40	12, 13
Prosecuting Inspectors—		
Notice of criminal appeals in Magistrates' Courts are given to —.	67	19

# INDEX

v

	Rule or Chapter	Page
Prosecuting Inspectors— <i>cont.</i>		
Powers of —	66	19
Responsibility of — for representation of the Crown in criminal cases and appeals.	68	19
Province—		
Definition of —	1	1
Provincial Government—		
Definition of —	1	1
Public Prosecutor—		
— advisory and other duties	23	8
Appointment of —	11	6
— a law officer	3	1
— a person to whom orders notifying commitments are issued.	17 (1)	7
Appearance of — in sessions trials	70	20
Casual leave to — and performance of his duties during such leave.	16 (2)	7
Confidential reports upon the conduct and ability of —.	13 (2)	6
Disabilities of —	24	8
Duties in civil Courts	20	8
Duties in criminal Courts	19	7
Engagement of —	145	42
Engagement of — in complicated criminal cases	103	29
Engagement of — in civil suits	132	38
— fees for work outside jurisdiction	35	12
Hot weather establishment and arrangement for —	38	12
Leave of absence and pension	16 (1)	6
Not to be appointed after 60 years of age	14	6
Participation in politics	12	6
Power of — to engage a private legal practitioner in certain cases.	42	13
Probation period and confirmation	13	6
Relations with District Magistrate and Police	25	9
Remuneration of — (case fees and special fees)	29—33	10, 11
Responsibility of — for timely action in certain cases.	154	44
— shall not withdraw from prosecution	18	7
Supply of copies of documents and other facilities to —	73—76	20, 21
Term of office	14	6
Termination of appointment	15	6
The Crown Pleader	17 (2)	7
Travelling allowance of —	34	11
Railway Authorities—		
District Magistrate to assist in criminal cases instituted by —.	104	29
Report(s)—		
Contents of —	127, 143	37, 41
— in civil suits after receipt of summons	133	39
Orders of Government on —	128, 134	38, 39
Orders of Government on — regarding civil suit	144	42
— to be prompt	126	37
When civil suits recommended to be filed by Government.	142	41
When appeal (civil) recommended	150, 151	43
Revision cases—		
Limitation for applications for —	Appendix I	50
Procedure in certain —	90	25
Procedure on issue of rule to show cause	87	24
Surcharge cases—		
Procedure in —	138	40



